

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 09-10017-GAO
	)	
TAREK MEHANNA,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

DAY TWENTY-EIGHT  
JURY TRIAL

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tuesday, December 6, 2011  
9:09 a.m.

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Mechanical Steno - Computer-Aided Transcript

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1		<u>I N D E X</u>			
2		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	<u>WITNESSES FOR THE</u>				
4	<u>GOVERNMENT:</u>				
5	EVAN F. KOHLMANN, resumed				
6	By Mr. Carney	7		129	
7	By Mr. Chakravarty		103		
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1 (The following proceedings were held in open court  
2 before the Honorable George A. O'Toole, Jr., United States  
3 District Judge, United States District Court, District of  
4 Massachusetts, at the John J. Moakley United States Courthouse,  
5 One Courthouse Way, Boston, Massachusetts, on December 6, 2011.

6 The defendant, Tarek Mehanna, is present with counsel.  
7 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn  
8 are present, along with Jeffrey D. Groharing, Trial Attorney,  
9 U.S. Department of Justice, National Security Division.)

10 THE CLERK: All rise for the Court.

11 (The Court enters the courtroom at 9:09 a.m.)

12 THE COURT: Good morning.

13 THE CLERK: Please be seated.

14 THE COURT: We have an issue with one of the jurors  
15 who phoned in, spoke to the clerk, said there was a family  
16 emergency, she would not be able to be here today, could not  
17 predict beyond today whether she would be available. I don't  
18 think we have any choice really but to let her go or suspend  
19 the trial until we find out something.

00:00 20 MS. BASSIL: Who is it?

21 MR. CARNEY: May I have a moment to have some private  
22 time with the client, probably in the back, to discuss this  
23 with him, because it's a pretty important decision. With your  
24 permission, your Honor.

25 THE COURT: I'll tell you which juror it is.

1 MS. BASSIL: Yes.

2 THE COURT: It is Juror No. 63 in Seat 13, Rachel  
3 Reagan. She's the woman from Oak Bluffs.

4 MS. BASSIL: Oh, okay.

5 THE COURT: All right. So I'll give you a chance to  
6 absorb that --

7 MR. CARNEY: Can we --

8 THE COURT: -- but keep the clock in mind.

9 MR. CARNEY: We'll do it within five minutes. Thank  
00:01 10 you.

11 THE COURT: All right.

12 THE CLERK: All rise for the Court.

13 (The Court exits the courtroom and there is a recess  
14 in the proceedings at 9:10 a.m.)

15 THE CLERK: All rise for the Court.

16 (The Court enters the courtroom at 9:25 a.m.)

17 MR. CARNEY: Thank you, your Honor. We did have a  
18 chance to speak with our client, and after discussing with him  
19 the issue, the rights he has under the Constitution, his  
00:16 20 options, I am reporting to the Court that he agrees that the  
21 missing juror should be excused and the alternate be a  
22 substitute. I believe he's made that decision knowingly,  
23 voluntarily and intelligently after ample time to discuss the  
24 issue with counsel.

25 THE COURT: Okay.

1 MR. CARNEY: Do you have any other questions for me?

2 MR. CHAKRAVARTY: No objection, your Honor.

3 THE COURT: Okay.

4 MR. CARNEY: Sorry?

5 (There is an audio interruption.)

6 THE COURT: I believe some radio said it.

7 Well, I think that is the course to take. I mean, it  
8 is uncertain. I'm not sure whether it would be wise to even  
9 skip the day, but we're not sure whether it would be more than  
00:17 10 today. And it's the reason we have alternates. So I think  
11 we'll proceed with the 15.

12 (Pause.)

13 THE CLERK: All rise for the jury.

14 (The jury enters the courtroom at 9:27 a.m.)

15 THE CLERK: Please be seated.

16 THE COURT: Good morning, jurors.

17 THE JURORS: Good morning.

18 THE COURT: Mr. Clerk has told you that,  
19 unfortunately, one of the jurors had a family emergency and  
00:19 20 will be unable to continue serving, so he's excused and we'll  
21 continue with the rest of you, okay?

22 Resuming with the evidence, where are we? Mr. Carney.

23 MR. CARNEY: May I proceed?

24 THE COURT: Yes, please.

25 EVAN F. KOHLMANN, resumed

## 1 CONTINUED CROSS-EXAMINATION

2 BY MR. CARNEY:

3 Q. Good morning, Mr. Kohlmann.

4 A. Good morning.

5 Q. Yesterday you briefly touched on the situation in the  
6 country of Yemen? Is that correct?

7 A. That's correct; yes.

8 Q. And you indicated earlier that you've never been to Yemen  
9 and you also don't speak Arabic, correct?

00:20 10 A. I don't speak Arabic fluently.

11 Q. Do you consider yourself an expert on Yemen?

12 A. Certain aspects of Yemen.

13 Q. You rely on news articles to get information about Yemen,  
14 don't you?

15 A. No.

16 Q. Did you provide the government with a Yahoo News article  
17 earlier this week?

18 A. I don't recall.

19 Q. Prior to the year 2001 al Qa'ida existed in Yemen, did it  
00:20 20 not?

21 A. It did. Yes, that's correct.

22 Q. After 9/11 President Saleh of Yemen came to the United  
23 States, did he not?

24 A. He did. That's correct.

25 Q. In November of 2001 he met with President George Bush?

1 A. That's correct.

2 Q. And he made a commitment to eliminate al Qa'ida from  
3 Yemen?

4 A. I believe he did. That's correct.

5 Q. Indeed, he was given a list of people who were considered  
6 the leadership of al Qa'ida in Yemen, and he promised that he  
7 would target them to either arrest them, jail them or eliminate  
8 them. Is that correct?

9 A. I wasn't at the meeting, but that's my understanding, yes.

00:21 10 Q. He and his government cooperated thereafter with the U.S.  
11 military in conducting drone attacks in Yemen?

12 A. That's correct; yes.

13 Q. And by "drone attacks," we mean a pilotless plane that is  
14 able to fly over an area with cameras so that the operators can  
15 see below, correct?

16 A. That's correct; yes.

17 Q. Some of these drones are for surveillance purposes,  
18 correct?

19 A. Correct.

00:21 20 Q. Other drones carry armaments and so can actually fire on a  
21 target below?

22 A. Correct.

23 Q. And President Saleh and his government cooperated in  
24 allowing drones to operate in Yemen. Is that right?

25 A. At least to a certain extent that's correct; yes.



1 Q. There is no evidence that training camps existed in Yemen  
2 after November of 2001 and before February of 2006?

3 A. No; that's incorrect.

4 Q. Well, the head of al Qa'ida in Yemen was being pursued  
5 after November of 2001, correct?

6 A. That's correct.

7 Q. As was his deputy chief, correct?

8 A. That's correct.

9 Q. They were on the run, correct?

00:22 10 A. That's correct.

11 Q. And, indeed, that head of al Qa'ida in Yemen was himself  
12 killed in a drone attack, was he not?

13 A. He isn't universally -- he was never sworn as the mirror  
14 of al Qa'ida; he is considered by U.S. authorities to have been  
15 the rough leader of al Qa'ida, that's correct, in Yemen.

16 Q. I don't think that was my question. My question was: Was  
17 the leader of al Qa'ida in Yemen killed by a drone attack?

18 A. I can't answer that with a yes-or-no answer.

19 Q. Okay. And al Qa'ida as an organization basically ceased  
00:23 20 to operate as any organized terrorist organization.

21 A. No; that's incorrect.

22 Q. Now, many of the members of al Qa'ida were killed, were  
23 they not?

24 A. That's true, yes.

25 Q. Others were arrested and jailed in a Yemeni prison. Isn't

1 that correct?

2 A. That's correct, over a space of about two years.

3 Q. And those prisoners were held until February of 2006,  
4 weren't they?

5 A. That -- well, the ones who were arrested. That's correct;  
6 yes.

7 Q. They were held in a prison?

8 A. That's correct. In Sanaa.

9 Q. And there was an infamous prison break in February of  
00:24 10 2006. Isn't that correct?

11 A. That's correct; yes.

12 Q. And it was led by the -- by a person who formerly had  
13 worked with Osama bin Laden, correct?

14 A. That's correct.

15 Q. He basically was the head of the al Qa'ida group that was  
16 in this prison, wasn't he?

17 A. If you're referring to Abu Basir al-Wahishi, that's  
18 correct; yes.

19 Q. And what they did is, undoubtedly with assistance,  
00:24 20 tunneled out of that prison to a nearby mosque. Is that right?

21 A. I don't know whether or not they received assistance.  
22 It's likely, but it's not been proven.

23 Q. And after this all of these folks were back in operation  
24 in Yemen, were they not?

25 A. That's correct; yes.

1 Q. Now, I'd like to talk to you about a subject that you  
2 brought up initially on Friday, and that's the concept of peer  
3 review. Do you recall that?

4 A. Yes. Yes, sir.

5 Q. And you mentioned that your work has been subject to peer  
6 review?

7 A. That's correct; yes.

8 Q. Now, what peer review means, as that's used in an academic  
9 or scholarly environment, is that a written work is reviewed by  
00:25 10 experts in the field --

11 A. That's correct.

12 Q. -- who determine if it is accurate and worthy of  
13 publication as a book or an article?

14 A. That's correct; yes.

15 Q. You pointed out an individual in the courtroom on Friday,  
16 Dr. Marc Sageman, correct?

17 A. That's correct; yes.

18 Q. You've known him for many years, right?

19 A. No, I've only known him for about -- personally, I've only  
00:25 20 known him for about three years.

21 Q. You're aware of his background, aren't you?

22 A. I am, yes.

23 Q. He has a BA degree from Harvard, a master's degree, an  
24 M.D. degree as a medical doctor, and a Ph.D. Is that correct  
25 to the best of your knowledge?

1 A. To the best of my knowledge that's correct; yes.

2 Q. Were you aware that he is the special advisor to the  
3 deputy chief of staff for the army for intelligence in the  
4 Pentagon?

5 A. I'm aware of that now.

6 Q. And you're aware now that he formerly worked for the CIA  
7 from 1984 to 1991 as a full-time agent or employee?

8 A. I was aware of that previously.

9 Q. And in that capacity in working for the CIA, he had  
00:26 10 postings in Afghanistan and Pakistan?

11 A. I believe that's correct.

12 Q. I'd love to ask you about whether you've seen "Charlie  
13 Wilson's War," but if there's an objection, will it be  
14 sustained?

15 MR. CHAKRAVARTY: There will be an objection, your  
16 Honor.

17 THE COURT: Yes, it will be.

18 (Laughter.)

19 BY MR. CARNEY:

00:26 20 Q. You would agree that he is a well-qualified expert in the  
21 area of terrorism?

22 A. On certain aspects of the area of terrorism, in my  
23 opinion, anyway.

24 MR. CHAKRAVARTY: Objection, your Honor. I would  
25 object and ask your Honor to make decisions as to what

1 testimony should be admitted as expert testimony.

2 THE COURT: Yeah. Yes, the objection to that question  
3 is sustained and the answer is stricken.

4 MR. CARNEY: Well, I'm not asking him if he's going to  
5 be admitted as an expert, your Honor, just whether he's well  
6 qualified.

7 THE COURT: The witness's opinion about his level of  
8 expertise is irrelevant.

9 MR. CARNEY: All right.

00:27 10 BY MR. CARNEY:

11 Q. Now, you've testified that when you publish an article you  
12 send it -- or are going to publish an article, you send it to  
13 dozens of people as an attachment to a mass email. Is that  
14 right?

15 A. Well, yes, unless there's a formal process of peer review.

16 Q. And you consider that to be a form of peer review, you've  
17 testified in the past, haven't you?

18 A. That's correct. It's a less-formal process of peer  
19 review, but it engenders the same general process, which is  
00:27 20 that you're submitting a paper for review by other experts and  
21 you're taking their comments and their feedback and you're  
22 incorporating it into the paper.

23 Q. Let's see if that's accurate. The peer-review process  
24 that you described earlier would be done by the publisher of a  
25 book or article, right?

1 A. That's how my book was -- that's the formal peer-review  
2 process.

3 Q. Well, let's just -- if you can answer my question "yes" or  
4 "no," we'll move along more quickly.

5 A. I didn't understand what the question was.

6 Q. All right. I'll repeat it.

7 A. Yeah.

8 Q. The process of peer review that you described earlier is  
9 one where an article or a book is sent out by the publisher to  
00:28 10 a group of experts for review to determine if it is accurate  
11 and worthy of publication. Is that --

12 A. You're referring to the formal process of peer review?

13 Q. Yes.

14 A. Yes; that's correct.

15 Q. Well, that's how "peer review" is defined, is it not?

16 A. That is the formal -- you asked whether or not I  
17 was -- you referred to something I'd said earlier, and I wasn't  
18 clear whether you were talking about informal peer review  
19 versus formal peer review.

00:29 20 Q. When peer review is done of an article by a publisher,  
21 it's intended to be sent to people who will report on that book  
22 or article anonymously to the publisher, correct?

23 A. I believe so. That's correct; yes.

24 Q. And the idea behind that is that the publisher will get  
25 independent feedback on whether the book is accurate or well

1 written or sensationalistic or whatever, correct?

2 A. That's correct.

3 Q. And it may well be that these peer reviewers are  
4 individuals in the same field as the author. Isn't that true?

5 A. I believe they typically are, yes.

6 Q. And that degree of anonymity protects a colleague who  
7 wants to say "This book really is not very good and should not  
8 be published because the research is inadequate, the writing is  
9 poor, and the analysis is very sketchy"?

00:30 10 A. Sort of. The anonymity does not really hold up over time.

11 Q. Well, the intent is for a colleague to speak candidly,  
12 correct, to the public?

13 A. That's the intent, yes.

14 Q. Now, when a publisher makes an arrangement to have  
15 something peer-reviewed, he has contacted the person who's  
16 going to be a peer reviewer and made arrangements for the  
17 person to review the book or article, right?

18 A. That's correct; yes.

19 Q. He asks if the person is willing to do so, right?

00:30 20 A. That's correct; yes.

21 Q. In some instances they even compensate someone for peer  
22 review. Isn't that right?

23 A. Typically they always compensate people for peer review.

24 Q. So it's a formal process.

25 A. Like I said, in the formal process of peer review. That's

1 correct; yes.

2 Q. When you send a mass emailing with an attachment to it,  
3 you're basically telling people in the field, "This is  
4 something I'm going to publish," correct?

5 A. No. "This is something" --

6 Q. Or, "This is something I'm going to have published."

7 A. "This is something I've written."

8 Q. And they're under no obligation to give you any feedback,  
9 correct?

00:31 10 A. No, they're not under any obligation.

11 Q. You don't pay them any money?

12 A. I generally don't pay people to read papers that I'm  
13 working on, no.

14 Q. And you don't ask them to give you a formal peer review of  
15 the work, do you?

16 A. Again, it depends on the context. If something is being  
17 published in a formal peer-reviewed journal like *African*  
18 *Security*, it must be peer-reviewed in a formal process.

19 Q. Is that done by you or the publisher?

00:31 20 A. It's done by the publisher.

21 Q. Okay. I'm talking about when you send out a mass email  
22 saying, "Here's the latest things I've written," all right?

23 A. Right.

24 Q. People are under no obligation to tell you whether it's  
25 the greatest thing ever written or a piece of crap, right?



1 A. Maybe I should clarify --

2 Q. Are they under any obligation? Try to listen carefully to  
3 my question because I'm trying to ask it carefully.

4 They're under no obligation to tell you whether it's a  
5 great piece of writing or it's a piece of crap, right?

6 A. They're not under any obligation, no.

7 Q. Okay. Now, you've claimed that virtually everything you  
8 write is carefully reviewed by colleagues, correct?

9 A. Either through a formal process of peer --

00:32 10 Q. Mr. Kohlmann, have you said that virtually everything you  
11 write is carefully reviewed by colleagues?

12 A. That's correct; yes.

13 Q. And you described this at a trial that you testified at as  
14 being a form of peer review, correct?

15 A. It's an informal process of peer -- well, it depends,  
16 because some of the stuff I write is formally peer-reviewed and  
17 some of it is informally peer-reviewed, so it depends on what  
18 you're referring to.

19 Q. I'm referring, Mr. Kohlmann, to the fact that you  
00:33 20 testified at a trial that sending documents to colleagues is a  
21 form of peer review that you use.

22 A. That's correct. It is.

23 Q. Okay. And at that trial you specifically identified  
24 Dr. Mohammed Hafez as someone who does this peer review,  
25 correct?

1 A. At the time he was someone who --

2 Q. Mr. Kohlmann, please. I want to get through this. At the  
3 trial did you specifically identify Dr. Mohammed Hafez as  
4 someone who did this peer review?

5 A. I identified him as someone who had done a peer review of  
6 something that I had sent to him. That's correct.

7 Q. Did you identify him as a close colleague of yours?

8 A. I identified him as a colleague, yes.

9 Q. Okay. Please listen to my question. Did you identify him  
00:33 10 as a close colleague of yours?

11 A. I recall identifying him as a colleague. I don't know if  
12 I used the word "close" or not.

13 MR. CARNEY: May I approach the witness, please?

14 THE COURT: You may.

15 MR. CHAKRAVARTY: What is it?

16 (Counsel confer off the record.)

17 BY MR. CARNEY:

18 Q. Mr. Kohlmann, I would ask you to take a look at this  
19 document to yourself, okay? And then let me show you -- would  
00:34 20 you read what I've highlighted here in this paragraph?

21 A. Sure.

22 Q. Read it to yourself, please.

23 A. Okay.

24 Q. Just this portion.

25 A. (Witness complies.)

1 Q. At this trial did you identify Dr. Mohammed Hafez as a  
2 close colleague of yours?

3 A. That's what the transcript indicates. I recall  
4 identifying him as a colleague. I'm not sure if I used the  
5 word "close" or not.

6 Q. Do you have any reason to dispute this transcript?

7 A. I don't know. I don't know.

8 Q. You also said he was a fluent Arabic speaker, correct?

9 A. That's correct; he is.

00:35 10 Q. Who had closely reviewed your work, correct?

11 A. He had reviewed my work. That's correct.

12 Q. Now, about nine days later you were given an affidavit by  
13 Dr. Hafez, right?

14 A. That's correct; yes.

15 Q. And an affidavit is a document containing information that  
16 is sworn under oath, correct?

17 A. That's correct.

18 MR. CHAKRAVARTY: Objection, your Honor. Can we  
19 approach?

00:35 20 THE COURT: All right.

21 (Discussion at sidebar and out of the hearing of the  
22 jury:)

23 MR. CHAKRAVARTY: Your Honor, from this setup it  
24 appears that counsel is both establishing a foundation for  
25 extrajudicial statements about the witness's work in the

1 peer-review process or in something else, which clearly there's  
2 an affidavit here; he talked about Mr. Sageman at length in  
3 terms of establishing him as a peer. It appears this line of  
4 questioning is now starting to embark upon what I anticipate,  
5 without knowing, what other witnesses or non-witnesses have  
6 said about this witness's prior work for the truth of the  
7 matter as to whether -- so the government is going to object.

8 MR. CARNEY: I'm offering it for the impact on the  
9 state of mind of the witness. At this time the witness  
00:36 10 continues to say that Dr. Hafez is a colleague who does a  
11 close review of his work. He knows that's not true. He  
12 continues to say it even in the face of an affidavit submitted  
13 by someone -- by Dr. Hafez who says, "I am a professor. I am  
14 not a close colleague of Mr. Kohlmann. I have never reviewed  
15 his work." And that affidavit --

16 THE COURT: Well, you could call Dr. Hafez to say  
17 that, but I don't think you can do it through hearsay.

18 MR. CARNEY: I'm not offering it for its truth --

19 THE COURT: Yes, you are.

00:37 20 MR. CARNEY: -- but the impact on this witness's state  
21 of mind.

22 THE COURT: No. The objection is sustained.

23 (In open court:)

24 MR. CARNEY: So I'll need to call Mr. Hafez as a  
25 witness in person?

1 THE COURT: The objection is sustained. We'll move to  
2 a new area.

3 BY MR. CARNEY:

4 Q. Do you continue to say that Dr. Hafez is a close colleague  
5 of yours?

6 MR. CHAKRAVARTY: Objection, your Honor.

7 THE COURT: Sustained.

8 BY MR. CARNEY:

9 Q. Is he a close colleague of yours today?

00:38 10 MR. CHAKRAVARTY: Objection, your Honor.

11 THE COURT: You may answer that.

12 THE WITNESS: Today? The last time I saw Dr. Hafez  
13 was at a conference about a year ago but --

14 BY MR. CARNEY:

15 Q. Mr. Kohlmann, please. The question is: Is he a close  
16 colleague of yours today? You can either answer it "yes,"  
17 "no," "I don't understand the question" or "I can't answer it  
18 yes or no."

19 A. It depends what you mean by "close colleague."

00:38 20 Q. How do you define a close colleague?

21 A. Someone who offers to -- or who asks me to work on a joint  
22 project with them, like Dr. Sageman or Dr. Hafez.

23 Q. So you consider today Dr. Hafez to be a close colleague of  
24 yours?

25 A. No, not -- I don't think "close" would be the word. But

1 Dr. Hafez and Dr. Sageman continue --

2 MR. CARNEY: Can the Court instruct the witness,  
3 please, if the question can simply be answered "yes" or "no" --

4 THE COURT: I think the witness may understand that  
5 because he said if it can be "yes," that's an appropriate way  
6 to answer; if it needs qualification, the witness may qualify  
7 it.

8 BY MR. CARNEY:

9 Q. So you can't answer that question "yes" or "no"?

00:39 10 A. It's not that simple. It depends on what you mean by  
11 "close colleague."

12 Q. Let me move on to another question. Do you continue to  
13 contend today that Dr. Hafez does a close review of your work?

14 A. No, not recently. I haven't -- ever since about 2008 --

15 Q. Mr. Kohlmann, "no" is the answer, right?

16 A. I believe as of today the answer is probably "no."

17 Q. Probably or certainly?

18 A. Well, he's still a colleague of mine. I just don't submit  
19 papers to him on a regular basis.

00:39 20 Q. Mr. Kohlmann, does he do a close review of your work now?

21 A. Not recently, no.

22 Q. Now, on Friday you said another way that you have peer  
23 review is that you speak at conferences and people get to ask  
24 you questions at the conference.

25 A. I present at conferences. That's correct.

1 Q. And people get to ask you questions who are in the  
2 audience?

3 A. Correct.

4 Q. And that's another example in your mind of peer review,  
5 correct?

6 A. Informal peer review, yes.

7 Q. But not the way peer review is considered by the rest of  
8 the scientific community.

9 A. I'm not sure about that.

00:40 10 MR. CHAKRAVARTY: Your Honor.

11 BY MR. CARNEY:

12 Q. You're not sure about that? Okay.

13 Now, you mentioned at other times --

14 THE COURT: Wait a minute.

15 MR. CHAKRAVARTY: Your Honor, there's an objection to  
16 the witness being asked to elicit what the rest of the  
17 scientific community feels about --

18 THE COURT: Well, the answer will stand.

19 Go ahead.

00:40 20 BY MR. CARNEY:

21 Q. You mentioned at other times that you submitted, on  
22 occasion, an article to the journal *Foreign Affairs*, correct?

23 A. The *Journal of Foreign Affairs*.

24 Q. To the magazine *Foreign Affairs*.

25 A. *Foreign Affairs*? Sorry. I thought you were saying the

1     *Journal of Foreign Affairs*. *Foreign Affairs* you're talking  
2     about, correct?

3     Q.    What is *Foreign Affairs*? Is it a journal?

4     A.    Yeah, it is a journal, but the title is not *Journal of*  
5     *Foreign Affairs*. Sorry. I didn't understand what you were  
6     saying.

7     Q.    When I said you submitted an article to the journal  
8     *Foreign Affairs*, you didn't understand what I meant?

9     A.    I thought you said *Journal of Foreign Affairs*. I wasn't  
00:41 10    sure what that was.

11    Q.    You're aware of what *Foreign Affairs* is.

12    A.    The magazine *Foreign Affairs*. Yes, I'm familiar with  
13    that.

14    Q.    Is that a journal?

15    A.    I don't know what the definition of "journal" specifically  
16    is. It depends on your definition, I guess.

17    Q.    You submitted an article to it, correct?

18    A.    I was asked to write something for *Foreign Affairs*.

19    Q.    Mr. Kohlmann, did you submit an article to it? Yes or no?

00:41 20    A.    I guess the answer would be yes.

21    Q.    And you've previously testified that to submit an article  
22    to *Foreign Affairs* requires a long process of peer review,  
23    correct? Have you said that?

24    A.    There was a process of peer review involved in that, yes.

25    Q.    Have you said that? You said it's proofread and looked



1 over and edited by a variety of people, including their senior  
2 editors, right? You've said that, right?

3 A. That's true, yes.

4 Q. Now, like most publications, *Foreign Affairs* informs its  
5 authors of its policies on its website, correct?

6 A. I believe so.

7 Q. And that policy says it welcomes unsolicited manuscripts,  
8 correct?

9 A. That's correct.

00:42 10 Q. And it says in the policy, "We do not have fact-checkers  
11 and rely on authors to ensure the voracity of their  
12 statements," doesn't it?

13 A. It may say that on their website.

14 MR. CARNEY: May I approach, please?

15 MR. CHAKRAVARTY: Your Honor, I'm not sure what the  
16 purpose of this approach is. It's not refreshing recollection;  
17 it's not impeaching.

18 MR. CARNEY: It qualifies the answer. I want to see  
19 if I can refresh his recollection.

00:43 20 THE COURT: Go ahead.

21 BY MR. CARNEY:

22 Q. Would you read this sentence to yourself that I'm pointing  
23 to? Do you see where I'm pointing?

24 A. Yes.

25 Q. So, in fact, the quote I gave was exactly the wording from

1 the website, wasn't it?

2 A. It is exactly the wording from the website.

3 Q. It also states that it reviews manuscripts on a rolling  
4 basis, doesn't it?

5 A. I didn't read that part.

6 Q. All right. Do you remember it saying that in the -- on  
7 the website?

8 A. I didn't submit my --

9 Q. Did you remember reading that on the website?

00:43 10 A. I haven't visited the website for *Foreign Affairs* in a  
11 long time.

12 Q. Would you read the first sentence, please, to yourself?

13 A. (Witness complies.)

14 Q. So it says it reviews manuscripts -- or accepts  
15 manuscripts on a rolling basis rather than on a fixed time  
16 frame. Is that correct?

17 A. Yeah, it says that on the website. That's correct; yes.

18 Q. So this rolling time frame means that they may accept a  
19 manuscript and publish it months later, correct?

00:44 20 A. That's what it says on the website.

21 Q. And that can obviously lead to a long delay, correct?

22 A. I don't know. I didn't submit my manuscript through the  
23 website, so I don't know.

24 Q. If a publication has a fact-checker, then that is an  
25 individual who is going to look at the article and make sure

1 the facts stated in the article are correct. Is that true?

2 A. Presumably, yes.

3 Q. Publications such as the *New Yorker* are legendary for  
4 having their fact-checkers. Isn't that true?

5 A. I have no idea. I've never written for the *New Yorker*.

6 Q. Are you familiar with the magazine?

7 A. I've read the *New Yorker*, yes.

8 Q. And are you familiar with their reputation for  
9 fact-checking for accuracy?

00:45 10 A. No, I'm not familiar with their policy about that.

11 Q. If a publisher has fact-checkers who are going to check  
12 the veracity of statements in an article submitted, then that  
13 is having someone independent, like peer-review, determine if  
14 the article is accurate, correct?

15 A. I don't know. I have no --

16 Q. Do you know what fact-checkers do?

17 A. I know what fact-checkers do, but I don't know if I can  
18 compare them to the process of peer review.

19 Q. Well, you said under oath in a previous trial that *Foreign*  
00:45 20 *Affairs* does do peer review before publication.

21 A. Well, my piece was. But I don't know -- I don't know  
22 about others. I know that my --

23 Q. So normally they trust an author is accurate when the  
24 author submits the publication, but in your case they wanted to  
25 have someone check it to see if it was accurate because you

1 were a special case?

2 MR. CHAKRAVARTY: Objection, your Honor.

3 THE COURT: Sustained.

4 BY MR. CARNEY:

5 Q. You said that it does do peer review. You said *Foreign*  
6 *Affairs* does do peer review of articles before publication.

7 A. If I said that, I misspoke. I was applying specifically  
8 to what I had written because my only experience with *Foreign*  
9 *Affairs* was submitting pieces to *Foreign Affairs* or having  
00:46 10 solicited from me to have something to submit was in that case  
11 that I did. I know what happened with my presentation to  
12 *Foreign Affairs* -- my two presentations to *Foreign Affairs*, and  
13 then the invitation for me to write something for *Foreign*  
14 *Affairs*. But I certainly can't speak to the general process  
15 because that's not -- I don't work for *Foreign Affairs*. I  
16 don't write regularly for *Foreign Affairs*. I was asked to  
17 write something for them after giving presentations in front of  
18 their general committee.

19 Q. And you said when you testified at a trial that *Foreign*  
00:47 20 *Affairs* does an extensive long process of peer review before  
21 publishing an article.

22 A. Again --

23 Q. That was just a misstatement by you. Is that right?

24 A. It wasn't a misstatement; it was --

25 Q. Didn't you say, like, one minute ago, "I misspoke"?

1 A. It was applying to the process that I went through to  
2 submit my piece. I hadn't read their website. I certainly  
3 hadn't read the page you just showed me. I was only familiar  
4 with the process inasmuch that I participated in it. And I  
5 was -- again, I was asked to write something for them after  
6 making presentations in front of their executive committees.

7 Q. Isn't it the truth, Mr. Kohlmann, that *Foreign Affairs*,  
8 just like its website says, doesn't do fact-checking, relies on  
9 the voracity of its authors, and you simply said that *Foreign*  
00:48 10 *Affairs* does a long process of peer review in order to make you  
11 look more like an expert?

12 MR. CHAKRAVARTY: Objection, your Honor. Whatever we  
13 know about *Foreign Affairs* is hearsay, your Honor.

14 THE COURT: Well, that may be true, that the website  
15 is hearsay. But the witness has already answered the question,  
16 so I see no harm in answering it again, but let's then move to  
17 something new.

18 MR. CARNEY: All right. I'll withdraw the question.

19 BY MR. CARNEY:

00:48 20 Q. But before we leave that article, do you remember the  
21 article was one that was critical of the U.S. government  
22 intelligence community?

23 A. That's correct. It was.

24 Q. And in particular, how they dealt with jihadi websites?

25 A. That's correct.

1 Q. And at the end of that article, at the beginning of the  
2 last paragraph, didn't you say "Deciphering these websites will  
3 require not just internet savvy but also the ability to read  
4 Arabic"?

5 A. That's correct. Yes.

6 Q. I'd like to return very briefly to your testimony  
7 yesterday about your having a degree in Islam. Do you remember  
8 when you said that?

9 A. Actually, I think I said it was a certificate. I think  
00:49 10 you said it was a degree.

11 Q. No, remember I said in -- I showed you the transcript of  
12 the radio interview and you were the one who twice said, "I  
13 have a degree in Islam," right?

14 A. I did say that as shorthand; that's correct.

15 Q. And yesterday you said your certificate is a degree in  
16 Islam.

17 A. It is a physical degree.

18 Q. In fact, you said, like a sheepskin that you put on the  
19 wall that shows you graduated.

00:50 20 A. No, I didn't say that.

21 Q. Well, you said it's hanging on your wall, right?

22 A. I didn't say it was a sheepskin. I did say it was hanging  
23 on my wall. It's part of my diploma. It's a secondary  
24 diploma.

25 Q. Now, every university, and Georgetown's included,

1 publishes a bulletin, correct?

2 A. That's correct.

3 Q. And this describes the programs that are offered at the  
4 university?

5 A. That's correct.

6 Q. And Georgetown has what's called an undergraduate  
7 bulletin, right?

8 A. That's correct.

9 Q. And to your knowledge, it talks about the certificate  
00:50 10 program, correct?

11 A. I'm only familiar with the bulletin as of 2001. I haven't  
12 read the bulletin, if there's been any changes made since then.

13 Q. Are you aware of any changes in the certificate program  
14 since it started?

15 A. There have been some changes in some of the certificate  
16 programs, but I'm honestly not familiar with the details of  
17 those because I haven't been a student at Georgetown in over a  
18 decade.

19 Q. Well, let me tell you if this sounds familiar -- or ask  
00:51 20 you if it sounds familiar, please.

21 MR. CHAKRAVARTY: Objection, your Honor.

22 THE COURT: Sustained.

23 BY MR. CARNEY:

24 Q. Isn't it a fact, Mr. Kohlmann, that according to  
25 Georgetown, certificate programs carry no special weight as

1 academic credentials outside the immediate university  
2 community?

3 MR. CHAKRAVARTY: Objection, your Honor.

4 THE COURT: Sustained.

5 BY MR. CARNEY:

6 Q. When you were a student was it the policy at Georgetown  
7 that certificate programs carry no special weight as academic  
8 credentials outside the immediate university community?

9 A. I don't recall any such statement, no.

00:51 10 Q. When you describe it as a degree in Islam, just to be  
11 sure, that's incorrect, isn't it?

12 A. Again, I think I covered this yesterday. When I said it  
13 was --

14 Q. No. Mr. Kohlmann, it's incorrect to say you have a degree  
15 in Islam, isn't it?

16 MR. CHAKRAVARTY: Your Honor, I think this was asked  
17 and answered yesterday.

18 THE COURT: Sustained.

19 MR. CARNEY: I'm just trying to wrap up this  
00:52 20 certificate talk today.

21 THE COURT: No, we had it yesterday. The objection is  
22 sustained.

23 BY MR. CARNEY:

24 Q. I'd like to ask you a few questions, Mr. Kohlmann, about  
25 the payment you receive for being an expert for the government.



1 A. Of course.

2 Q. Now, being an expert witness for the United States  
3 government has been a pretty lucrative part of your career,  
4 hasn't it been?

5 A. I mean, if I'd really wanted to make money, I could have  
6 been a lawyer. It hasn't been altogether that lucrative.

7 Q. Well, let's find out.

8 (Laughter.)

9 Q. You do know, by the way, that Attorney Bassil and I are  
00:53 10 court appointed in this case?

11 A. Oh, I wasn't referring to you.

12 Q. Oh, no, of course not.

13 (Laughter.)

14 Q. But you're aware we're court appointed --

15 A. Like I said, I wasn't referring to you. I was referring  
16 to myself.

17 Q. -- and get 20 percent of our normal hourly rate?

18 A. I should be clear, I was referring to myself. I could  
19 have become a corporate lawyer; I didn't.

00:53 20 Q. Now, sometimes when you are an expert witness you bill by  
21 the hour, correct?

22 A. Almost invariably I think I -- except for U.S. military I  
23 think I bill by the hour.

24 Q. Sometimes you charge a flat fee for your services?

25 A. Not inside the United States. Not that I'm aware of.

1 Q. How about in Guantanamo?

2 A. In that case, yes, because that's U.S. military. That's  
3 correct.

4 Q. Now, in the first case you testified for a federal  
5 prosecutor you charged \$200 an hour. Is that right?

6 A. That sounds about right.

7 Q. Earlier this year did you testify that at the first trial  
8 that you testified at as an expert you were paid \$200 an hour?  
9 Do you remember that case?

00:54 10 A. I believe I had been refreshed with a copy of an invoice.  
11 But, again, that sounds about right.

12 Q. In 2006 your rate went up to \$225 an hour, right?

13 A. Approximately, yes. It's not fixed per every single case;  
14 it depends on what's required and it depends on how many hours  
15 are involved.

16 Q. Did you testify that in 2006 your hourly rate was \$225?

17 A. Approximately depending on -- depending on the case.  
18 That's correct.

19 MR. CARNEY: May I approach the witness, please?

00:55 20 THE COURT: All right.

21 (Counsel confer off the record.)

22 BY MR. CARNEY:

23 Q. Let me show you this. Would you read that and that?

24 A. (Witness complies.)

25 Q. Okay. In 2006 you were asked "How much are you paid," and

1 you said, "I'm paid by the hour. I'm paid \$225 an hour."

2 A. In that case.

3 Q. Is that what you testified to?

4 A. In that case.

5 Q. So in 2006 you were billing at \$225 an hour?

6 A. In that case. That's not a universal con- --

7 Q. In 2008 your rate went up and you said you were charging  
8 between \$250 and \$300 an hour?

9 A. That's correct.

00:56 10 Q. By 2010 you were now charging \$300 an hour?

11 A. Approximately. It varies --

12 Q. Well, does it vary between, like, \$295 and \$310 an hour?

13 MR. CHAKRAVARTY: Objection, your Honor.

14 BY MR. CARNEY:

15 Q. Well, I'm just asking. What do you mean by "approximately  
16 \$300 an hour"?

17 THE COURT: You may have it.

18 THE WITNESS: It varies depending on each case. Each  
19 case -- the contracts are negotiated individually, so it's  
00:56 20 not -- it's not a constant. It can range anywhere from one  
21 figure to another.

22 BY MR. CARNEY:

23 Q. Okay. Can you take a look at this case?

24 A. Yes.

25 Q. Okay. You were asked, "You are being paid \$300 an hour."

1 Your answer was, "That's correct"?

2 A. In that case. Yes; that's correct.

3 Q. And that was in 2010, last year, correct?

4 A. I believe so, yes.

5 Q. In 2011 you've testified that you now get paid \$400 an  
6 hour?

7 A. Not constantly, no. It ranges anywhere from \$300 to \$400  
8 an hour depending on the individual contract. Most contracts  
9 are for \$350 an hour.

00:57 10 Q. When you were asked on July 1st, 2011, in the Kaziu trial  
11 if you are paid for your work, you said -- you were asked, "You  
12 charge \$400 an hour," correct?

13 A. In that case. That's correct; yes.

14 Q. So my question was: In 2011 you get paid, now, \$400 an  
15 hour. Not in every case. There are some special cases where  
16 you give a discount, perhaps. But my point is, your rate has  
17 gone, over the last five years, from 200 to 225 to 250 to 300,  
18 and as of a few months ago, 400 an hour?

19 A. My general rate is 350. In that case I did get paid 400.

00:58 20 Q. Well, why did you get paid 400 in that case?

21 A. I negotiated a higher contract.

22 Q. So you basically told them, "If you want my testimony, I  
23 want \$400 an hour" even though your regular rate was \$350 an  
24 hour?

25 A. Not exactly.

1 Q. And they gave in to you and did pay you \$400 an hour. Is  
2 that right?

3 A. I don't know if "giving in to me" is the way I would  
4 describe it but, yes, they did agree to pay me \$400 an hour.

5 Q. Now, this is for time spent in court testifying, right?

6 A. Part of it. Yes; that's correct.

7 Q. And it's spent time waiting to testify, or sitting in the  
8 courtroom and watching other people testify?

9 A. No, I generally don't get paid sitting around.

00:59 10 Q. You, in this case, provided the prosecutors with a report  
11 that was 62 pages long, correct?

12 A. I believe I did; that's correct.

13 Q. And this report was single-spaced?

14 A. Yes, it was.

15 Q. And some of this report was lifted verbatim from reports  
16 you've given different prosecutors in different parts of the  
17 country on entirely different cases, right?

18 A. That's correct. There were --

19 Q. You just used, basically, cut and paste to put something  
01:00 20 in your report?

21 A. Not cut and paste, but there were --

22 Q. You retyped it again?

23 A. No, there were footnotes and there were particular pieces  
24 of evidence that were --

25 Q. There were whole sections of the report that were copied

1 verbatim from prior reports you had done, correct?

2 A. The evidence in this case --

3 Q. Mr. Kohlmann, please, would you answer my question?

4 Entire segments of your 62-page report given to these  
5 prosecutors were copied verbatim from previous reports you had  
6 done from different prosecutors in different districts, right?

7 A. I don't know if they were verbatim, but they were  
8 certainly very similar; that's correct.

9 Q. Now, at one time you were asked to prepare a video for a  
01:00 10 case that would compile video clips, audio clips, and document  
11 translations from your collection, correct?

12 A. What exactly are you referring to? Are you referring to  
13 work done for the U.S. military?

14 Q. Yes.

15 A. That's correct; yes.

16 Q. And you took these videos and audiotapes and document  
17 translations and put them in this compilation, correct?

18 A. That's correct. Yes, I did.

19 Q. And you charged the government \$20,000 to do this?

01:01 20 A. I did. That's correct; yes.

21 Q. Now, you're paid by the FBI on occasion to consult with  
22 them too, correct?

23 A. I am. That's correct.

24 Q. And that's separate and apart from anything you're paid by  
25 prosecutors, correct?

1 A. That's correct; yes.

2 Q. And that money is paid to you as an hourly fee, is it not?

3 A. By the FBI?

4 Q. Yes.

5 A. No.

6 Q. Is it by case?

7 A. It varies, really.

8 Q. Okay. I'd like to focus on the years 2006 to 2010, those  
9 five years. Can you please tell us how much you have been paid  
01:02 10 in total by federal prosecutors during that period to be a  
11 witness or potential witness in their cases?

12 A. I'd have to review some documentation that I brought with  
13 me.

14 Q. Okay. So --

15 A. Excuse me.

16 Q. You knew, of course, that you received a subpoena to bring  
17 these financial records to court.

18 A. That's correct. I did.

19 Q. And, in fact, you wanted the subpoena to be --

01:02 20 MR. CHAKRAVARTY: Objection.

21 BY MR. CARNEY:

22 Q. -- vacated?

23 THE COURT: Sustained.

24 BY MR. CARNEY:

25 Q. You did not want to provide the information, did you?

1 MR. CHAKRAVARTY: Objection.

2 THE COURT: Let's get to the --

3 MR. CARNEY: Okay.

4 BY MR. CARNEY:

5 Q. You knew when you were asked to bring these records to  
6 court that you'd be asked questions about them. Isn't that a  
7 reasonable inference you drew?

8 A. I didn't know, but I assumed that if you were subpoenaing  
9 me, you might want to ask me questions about them.

01:02 10 Q. Do you know what? You're exactly right. The reason I  
11 subpoenaed your financial records to court is because I wanted  
12 to ask you questions about them. Have you looked at them?

13 A. I have them, but they're right there. I haven't --

14 Q. Did you look at them before testifying?

15 A. Very briefly.

16 MR. CARNEY: Your Honor, may he look at the records?

17 THE COURT: All right.

18 (Pause.)

19 THE WITNESS: Excuse me. You said 2006 on, correct?

01:03 20 BY MR. CARNEY:

21 Q. In essence, I'd like you to look at -- whether it's a  
22 1099, whether it's some other form of formal document, that  
23 indicates what the gross payment was to you in the year 2006,  
24 2007, 2008, 2009, and 2010, combined, of payments to you by  
25 federal prosecutors to either be a witness or a potential



1 witness or assist them with the case.

2 A. Just to clarify, 2006 to 2010?

3 Q. These five years: 2006, 2007, 2008, 2009, 2010.

4 A. Sure. Just one moment and I'll give you the answer.

5 Q. Sure.

6 (Pause.)

7 A. I have been paid -- in those years I was paid  
8 approximately \$520,000, \$516,000 -- somewhere between \$516,000  
9 and \$520,000.

01:05 10 Q. All right. And during those same five years how much have  
11 you been paid by the FBI?

12 A. That would be approximately \$50,000.

13 Q. You've been a consultant to state and local prosecutors as  
14 well. Is that true?

15 A. Not in trials, no.

16 Q. What about in consultations?

17 A. Would you define "consultation" as including a  
18 presentation, like a speech?

19 Q. No.

01:05 20 A. Then no.

21 Q. Okay. You've been paid by foreign governments during  
22 those five years, correct?

23 A. That's correct; I have.

24 Q. How much in total during those five years have you been  
25 paid by foreign governments?

1 A. One moment and I'll tell you that too.

2 (There is a pause.)

3 A. This is again 2006 to 2011?

4 Q. 2010 would be fine.

5 A. Okay. The total is \$389,000.

6 Q. You've been -- you say on your website that you offer a  
7 host of consulting services for private corporations?

8 A. That's correct; yes.

9 Q. Have you been retained by private corporations?

01:06 10 A. Yes, I have.

11 Q. During those five years how much have you been paid as a  
12 terrorist consultant?

13 MR. CHAKRAVARTY: Objection, your Honor.

14 THE COURT: Sustained.

15 BY MR. CARNEY:

16 Q. You get paid for speaking engagements, do you not?

17 A. I do.

18 Q. And how much do you generally charge for a speaking  
19 engagement?

01:06 20 A. It -- usually, approximately, \$1500.

21 Q. And how much -- how often do you have a speaking  
22 engagement?

23 A. It varies. It really depends what the opportunities are.

24 Q. Have you testified that on average it's two or three times  
25 a month?

1 A. It might have been when I testified, but I was ill earlier  
2 this year so I had to cancel a number of speaking engagements.

3 Q. But normally it was two or three times a month?

4 A. About two or three times a month, approximately.

5 Q. You said also you are -- you appear on the NBC television  
6 channel, correct?

7 A. That's correct; yes.

8 Q. And you have a contract for that?

9 A. I do.

01:07 10 Q. And that's based on your so-called terrorism expertise,  
11 correct?

12 A. That's correct.

13 Q. And what is your annual contract currently with NBC?

14 MR. CHAKRAVARTY: Objection, your Honor.

15 THE COURT: Sustained.

16 MR. CARNEY: May I be heard, please?

17 THE COURT: Yes.

18 (Discussion at sidebar and out of the hearing of the  
19 jury:)

01:08 20 MR. CARNEY: Your Honor, this directly goes to the  
21 bias of the witness. By being perceived as a terrorism expert  
22 and testifying for the government, it builds up his credentials  
23 so he can get a much more lucrative contract with a TV station  
24 as well as contracts with private corporations. He parlays  
25 this courtroom expert gig into substantial -- substantially

1 more money, and I submit that goes directly to his bias in  
2 doing this.

3 MR. CHAKRAVARTY: There are talking heads --

4 THE COURT: Well, I think you have the point without  
5 the number. The numbers are relevant, particularly for the  
6 government, his work for the government, quantifying that.  
7 Quantifying other outside sources when -- you can still make  
8 the argument that he's trading off one to boost the other  
9 without the number.

01:09 10 MR. CARNEY: It doesn't have the power without knowing  
11 what that number is.

12 THE COURT: I think the numbers are high enough that  
13 you have the point that you want to make. The objection is  
14 sustained.

15 (In open court:)

16 BY MR. CARNEY:

17 Q. What percentage of your annual income during this period  
18 comes from testifying as a witness or working with federal  
19 prosecutors or the FBI?

01:09 20 MR. CHAKRAVARTY: Objection, your Honor. This is an  
21 extrapolation.

22 THE COURT: No, you may have that question.

23 THE WITNESS: Over that entire period?

24 BY MR. CARNEY:

25 Q. Yes.

1 A. Probably about --

2 Q. I'm asking you to take your combined income for those five  
3 years, subtract what you've been paid by federal prosecutors  
4 and FBI and foreign governments, and what does that number  
5 represent as a percentage of your annual income?

6 A. I would say it's probably between -- around 40 percent.

7 Q. The 40 percent is what you're paid by the federal  
8 government and FBI and --

9 A. And foreign governments and U.S. military.

01:10 10 Q. And the 60 percent is otherwise?

11 A. That's correct; yes.

12 Q. From your private business?

13 A. From clients -- from private clients, from NBC, from  
14 giving speeches, things like that.

15 Q. Now, you continue to be on the staff of NEFA, don't you?

16 A. Loosely. I don't actively do work for them at the moment.

17 Q. Are you on their website?

18 A. I believe I am. That's correct.

19 Q. How long are you with NEFA -- or have you been with NEFA?

01:10 20 A. I'll tell you right now. Since July 15, 2005.

21 Q. And "NEFA" stands for "Nine Eleven Finding Answers,"  
22 correct?

23 A. That's correct.

24 Q. And it purports to be a nonprofit foundation that strives  
25 to prevent future tragedies in the U.S. by exposing -- and

1     abroad -- by exposing those responsible for planning, funding  
2     and executing terrorist activities with a particular emphasis  
3     on Islamic militant organizations.

4     A.    That's correct.

5     Q.    Did I describe that correctly?

6     A.    That's correct; yes.

7     Q.    And when did you -- I'm sorry. How long have you been  
8     associated with NEFA?

9     A.    I've been associated with them from -- starting, again,  
01:11 10    July 15, 2005.

11    Q.    And as I mentioned, you continue to be on their website?

12    A.    Yeah, I'm a consultant. But I don't -- at the moment I'm  
13    not actively doing work on their behalf. I'm not being  
14    compensated, so...

15    Q.    Do you get paid directly or indirectly in any manner by  
16    NEFA?

17    A.    I have not been paid by NEFA since last May.

18    Q.    How much were you paid by NEFA prior to that?

19    A.    Prior to that I was paid on a monthly --

01:11 20           MR. CHAKRAVARTY: Objection, your Honor.

21           THE COURT: Sustained. Same reason as we discussed at  
22    the side.

23    BY MR. CARNEY:

24    Q.    Well, who is David Draper?

25    A.    He is, I believe, the director of strategic something for

1 NEFA.

2 Q. Strategic operations?

3 A. That's correct.

4 Q. And NEFA holds itself out as a nonprofit, correct?

5 A. I believe so. I'm not involved with their finances, but I  
6 understand them to be a 501(c)(3), yes.

7 Q. 501(c)(3) means it's a nonprofit organization?

8 A. That's my general -- again, I'm not responsible for that  
9 area of --

01:12 10 Q. And it solicits donations, doesn't it?

11 A. I'm not involved in that, so I don't know.

12 Q. Well, are you aware that in 2009 David Draper was paid  
13 \$405,000 --

14 MR. CHAKRAVARTY: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MR. CARNEY:

17 Q. -- as a consultant to this organization that he's the  
18 director of strategic planning?

19 THE COURT: Mr. Carney, the objection is sustained.

01:12 20 The jurors are instructed, of course, that a question  
21 is not evidence.

22 BY MR. CARNEY:

23 Q. Now, you've testified in the past that you're not  
24 interested in selling your book on the website, right?

25 A. Selling my book on what website?

1 Q. Your website.

2 A. I don't recall testifying about that but --

3 Q. Do you remember three years ago saying, "I don't sell  
4 anything on the website. I don't sell books"?

5 A. I don't sell anything on the website.

6 Q. Okay.

7 MR. CARNEY: May I approach, please?

8 Q. Your website is flashpoint-intel.com?

9 A. That's correct.

01:13 10 Q. Is this a screen shot of consulting services?

11 A. That's correct.

12 Q. And this is a screen shot taken 12/4/2011, last week?

13 A. That's correct.

14 Q. Is that your book on it?

15 A. Yeah, but I didn't put that there. I don't know how that  
16 got there. I don't --

17 Q. Does it say "Purchase online via Amazon.com"?

18 A. Well, yeah. I'm not selling the book on my website.

19 Q. Oh, I see. You're not selling a book on your website;  
01:14 20 you're just having a picture of the book on your website with a  
21 blurb underneath it describing the book, and a link to say view  
22 more about the book, and a link directly under the book that  
23 says, "Purchase online via Amazon.com"?

24 A. Yeah, because we don't sell anything on the website.

25 Q. Let me turn to another subject.



1 A. Uh-huh.

2 Q. Social science is supposed to be a neutral and independent  
3 study of various data to reach a conclusion. Would you agree  
4 with that?

5 A. That's a fair statement.

6 Q. And by doing a neutral and independent study of data to  
7 reach a conclusion, one hopefully will reach an impartial and  
8 accurate conclusion. Isn't that fair to say?

9 A. I think that's fair to say, yes.

01:15 10 Q. Now, in this case the only material you looked at was the  
11 specific material provided to you by the prosecutor, correct?

12 A. That's correct; yes.

13 Q. He put that material on a hard drive for you to review.

14 A. I don't believe the prosecutor put any evidence on a hard  
15 drive. I think that was a raw, preserved copy from the FBI.

16 Q. You know that for a fact?

17 A. I'm pretty sure I received it directly from the FBI.

18 Q. But you don't know that, do you?

19 A. I don't have the envelope in front of me, but typically  
01:16 20 speaking, when I'm sent drives, they're not sent by the U.S.  
21 Attorney's Office; they're sent from the FBI.

22 Q. You didn't look at any of the other evidence in this case,  
23 did you?

24 A. No; that's correct.

25 Q. You didn't see any witness statements, did you?

1 A. I'm not aware if there were any.

2 Q. You didn't review any 302s, which are reports, made by FBI  
3 agents, right?

4 A. Not in this case. That's correct.

5 Q. You didn't look at grand jury testimony, did you?

6 A. I have never seen grand jury testimony as -- offered as  
7 evidence to me in any case.

8 Q. You haven't seen transcripts of what witnesses have  
9 testified to in this trial, have you?

01:16 10 A. No. That's correct.

11 Q. You're aware that daily transcripts are produced by our  
12 extraordinary court reporters?

13 A. Yes, but generally speaking --

14 Q. The best court reporters in the building?

15 A. Generally speaking.

16 Q. You never mess with the court reporter.

17 A. Generally speaking, that's also not the kind of evidence  
18 that I'm given to review in any case.

19 Q. Now, you have testified as an expert in federal court in  
01:17 20 criminal cases 20 times, correct?

21 A. That's correct; yes.

22 Q. And every single time it's been for the prosecution,  
23 correct?

24 A. That's correct; yes.

25 Q. Have you ever declined to testify for a federal prosecutor

1 in a case, and refused to do so?

2 A. I have declined to testify, yes.

3 Q. And was that because -- or how many times have you  
4 declined to testify?

5 A. I think on one occasion, I believe.

6 Q. And what was the reason?

7 A. I believe that they were interested in a particular  
8 organization for which I really didn't believe I had enough  
9 data to write a comprehensive report on.

01:17 10 Q. And so that's the only time you've declined?

11 A. That I can recall offhand.

12 Q. Now, have you ever been asked to provide assistance to a  
13 defense team?

14 A. On one occasion.

15 Q. Well, last year when you were asked this question you said  
16 that so far you'd never been approached to do work for a  
17 defense team, correct?

18 A. I believe that was correct when I said it, yes.

19 Q. So that was correct when you said it in 2010?

01:18 20 A. I believe so. I'd have to see the exact timing, but I  
21 believe so.

22 Q. Well, do you remember testifying in other cases that  
23 you've, in fact, been asked to testify on -- or to work with a  
24 defense team on two occasions?

25 A. There was only one serious request. If I said --

1 Q. In that --

2 A. Yeah.

3 Q. And in regard to that serious request, you declined to  
4 work for the defense team?

5 A. That's correct. I did.

6 Q. So your record is intact that the only time you have  
7 testified either for the federal prosecutors or for prosecutors  
8 in another country or for the military it's always been on the  
9 side of the government. Isn't that correct?

01:19 10 A. Internationally it's a little bit different because in  
11 some international courts when you testify as an expert you're  
12 not necessarily testifying on behalf of a particular side;  
13 you're being called as an expert to testify just for the  
14 court --

15 Q. In every instance where you have been called as a party,  
16 it's always been the federal prosecutor or the federal  
17 prosecutor in a military tribunal or federal prosecutor --

18 A. If you set aside those foreign courts?

19 Q. I'm setting this aside, Mr. Kohlmann.

01:19 20 A. Yes. That's correct; yes.

21 Q. Now, you testified that because you don't have security  
22 classification -- or security clearance, rather, you are  
23 limited to open-source research, correct?

24 A. That's correct; yes.

25 MR. CHAKRAVARTY: Your Honor, I'm not sure exactly

1 what the next question is, but this entire area was covered ad  
2 nauseam yesterday.

3 THE COURT: That's fine. We'll see what the questions  
4 are.

5 BY MR. CARNEY:

6 Q. This is information that is publicly available, correct?

7 A. Publicly to a limited extent, or to a certain extent.

8 Q. Well, you described "open source" as information that does  
9 not come from intelligence agencies.

01:20 10 A. That is correct; yes.

11 Q. Now, on Friday you gave some examples of what this  
12 open-source material is. Do you recall that?

13 A. I do, yes.

14 Q. The first thing you cited was video recordings and audio  
15 recordings released by terrorist organizations.

16 A. That's correct; yes.

17 Q. These are items obviously released by these organizations  
18 intentionally to the public, correct?

19 A. Sometimes.

01:21 20 Q. They are usually available on the web or for sale by  
21 individuals. Is that correct?

22 A. Sometimes.

23 Q. And these videos and audio recordings are propaganda, are  
24 they not?

25 A. Sometimes. It depends on the context of how and what's

1 being released and in what context. It depends.

2 Q. Well, on the NEFA website that you've told us about that  
3 you're still associated with, they have links to videos on its  
4 website, don't they?

5 A. Excerpts from videos. Yes; that's correct.

6 Q. And they call this propaganda videos, don't they?

7 A. I don't know if -- not all of them, no.

8 Q. They're not all called propaganda videos?

9 A. No. Definitely not.

01:22 10 Q. Would you agree that "propaganda" is defined as  
11 information, ideas or rumors deliberately spread to help an  
12 organization sending it or to hurt the target of the  
13 organization?

14 A. That might be one definition.

15 Q. And, for example, the term "propaganda" can often be  
16 applied to ads in political campaigns when they're trying to  
17 say something bad about an opposing person or say something  
18 good about themselves?

19 A. They might. It's a pejorative term.

01:22 20 Q. Propaganda by its very nature is unreliable, isn't it?

21 A. No, I would disagree with that.

22 Q. For example, propaganda can occur when a country issues a  
23 press release saying it's decisively winning a war when the  
24 fact is it's getting its butt kicked. Isn't that right?

25 A. It's possible.

1 Q. Well, that's one instance where propaganda has been used  
2 frequently, right?

3 A. I'm not really an expert in that area of propaganda. My  
4 expertise is in terrorist propaganda.

5 Q. It's often used to boost morale in the face of contrary  
6 evidence, right?

7 A. It can be.

01:23 8 Q. Now, you mentioned that sometimes on web forums there  
9 might be a posting that says, "Good-bye, I'm off to do jihad,"  
10 right?

11 A. That's correct.

12 Q. That can be a completely false account placed by a  
13 terrorist organization. Isn't that right?

14 A. It could be.

15 Q. And there's no way for you to verify if it's accurate?

16 A. No; that's not correct.

17 Q. The second category of open-source material you rely upon,  
18 you said, is magazines released by terrorist organizations,  
19 correct?

01:23 20 A. That's correct.

21 Q. And this, again, can be termed propaganda intentionally  
22 released by the organization to make it look good, make it look  
23 victorious?

24 A. It depends on what magazine and in what context it's being  
25 released, what the intended audience is.

1 Q. Have you ever seen a magazine put out by a terrorist  
2 organization that makes the organization look bad?

3 A. I have seen documents put out by terrorist organizations  
4 which do make them look bad, yes.

5 Q. Where they say, "We're losing, we should give up"?

6 A. Sometimes they're self-critical. I don't know if they say  
7 "we're losing" or "we should give up," but there are certainly  
8 documents which are self-critical, yes.

9 Q. And indicate what they need to do to get better?

01:24 10 A. There are usually suggested -- suggestions. Yes; that's  
11 correct.

12 Q. Another open-source category that you rely on is postings  
13 on web forums by people, correct?

14 A. That's correct; yes.

15 Q. You stated that you have had registered accounts on  
16 virtually every single online forum used by violent extremists  
17 since 2002, correct?

18 A. That's correct.

19 Q. Now, what forums have you not had a registered account on?

01:24 20 A. The only forum at present that I do not have a registered  
21 account on is an English-language forum known as Ansar  
22 al-Mujahideen. And, excuse me, I did not have a registered  
23 account on at-Tibyan either.

24 Q. On what?

25 A. The at-Tibyan forum.



1 Q. Now, the at-Tibyan forum is the forum that has been  
2 frequently discussed in this trial and which has so many  
3 postings on that material you were given, right? Material you  
4 were given by the prosecutors?

5 A. I was shown documents from the at-Tibyan forum. That's  
6 correct; yes.

7 Q. And you described it as a very significant web forum,  
8 correct?

9 A. That's correct.

01:25 10 Q. And you didn't have access to it, did you?

11 A. I didn't say I didn't have access to it; I said I didn't  
12 have a log-in and password --

13 Q. You didn't have a registered account?

14 A. I didn't have a registered account; that's correct.

15 Q. Now, the final category of open source you mentioned is  
16 original interviews that you've done, right?

17 A. That's correct; yes.

18 Q. Now, the largest group of people who you've done  
19 interviews of were people who fought in Afghanistan between  
01:26 20 1996 and -- I'm sorry -- 1986 and 1995. Is that correct?

21 A. I don't know if that would be the largest -- I mean, I've  
22 interviewed Iraqi insurgents, I interviewed Afghan veterans,  
23 I've interviewed veterans of conflicts in --

24 Q. But the single largest group.

25 A. Actually, I don't think that's the case. The single

1 largest group is Iraqi insurgents.

2 Q. When you were asked by the prosecutor where you have gone  
3 to, you said Bosnia, Indonesia, Saudi Arabia, Qatar and Jordan.

4 A. That's correct.

5 Q. Let's take Saudi Arabia, Qatar and Jordan as three. These  
6 are, unquestionably, Middle East countries, right?

7 A. That's correct.

8 Q. Have you lived in any of these countries?

9 A. I haven't lived in those countries, no.

01:27 10 Q. Have you rented an apartment in those countries to stay?

11 A. No, I haven't rented an apartment in those countries.

12 Q. What's the longest continuous period that you've been in  
13 Saudi Arabia?

14 A. About a week.

15 Q. Qatar?

16 A. I think like two or three days.

17 Q. Jordan?

18 A. About a week.

19 Q. Is it true that the reason you would go to these countries  
01:27 20 was to speak at a conference?

21 A. Part of the reason, yeah.

22 Q. Is that the most frequent reason?

23 A. It's a common reason. That's correct.

24 Q. And when you'd go there for the conference, it's fair to  
25 say that you primarily interact with the conference

1 participants?

2 A. And the hosts and the -- the hosting -- the governments  
3 that are hosting the conferences.

4 Q. So the participants and the governments, that's who you  
5 primarily deal with when you go to these conferences?

6 A. That's correct; yeah.

7 Q. Now, you've claimed in the past to do field work. Is that  
8 right?

9 A. That's correct.

01:27 10 Q. And field work means you go to a country to interview  
11 people who are indigenous or native to that country, correct?

12 A. That's correct.

13 Q. And that is an excellent original source of data, isn't  
14 it?

15 A. It can be depending on who you're interviewing.

16 Q. If you interview the right people it can be invaluable,  
17 right?

18 A. If they're willing to talk and if there's a place to meet  
19 with them and if they're willing to be candid, it can be. It  
01:28 20 really depends on the circumstances.

21 Q. Field work is an essential part of social science  
22 research, isn't it?

23 A. I'd say that's probably true.

24 Q. And you've indicated that you have never done field work  
25 in your career in a country where the native language is

1 Arabic.

2 A. That's correct. Yeah; that's correct.

3 Q. Now, you've sometimes said that you've done undercover  
4 work, right?

5 A. Well, it's been described as that, yes.

6 Q. Well, has it been described by Evan Kohlmann that it's  
7 undercover work?

8 A. Potentially I used that word at some point.

9 Q. So Evan Kohlmann has described it as being undercover  
01:29 10 work?

11 A. No, others have described it as that as well. That's not  
12 the best word for it. I think the way is that I was -- I was  
13 interviewing people who did not fully understand what -- who I  
14 was. I didn't lie to them, though.

15 Q. Haven't you testified that you have done undercover work?

16 A. It's possible I used the word "undercover." Again, it's  
17 not just me who uses that word. But that's not the most  
18 appropriate word.

19 Q. And you gave an example of what you considered to be  
01:29 20 undercover work as attending a public protest in Britain. Do  
21 you recall that?

22 A. That was one example. That's correct.

23 Q. And basically, you went to this public protest and watched  
24 it, and even videotaped it, right?

25 A. And interviewed protesters, yes.

1 Q. And that's what you considered to be undercover work?

2 A. No, that was one of several examples that I had given.

3 Q. Well, didn't you say that you put yourself at risk at  
4 doing these things?

5 A. That I did.

6 Q. And that nobody else is doing it?

7 A. At the time there wasn't anyone else doing what I was  
8 doing.

9 Q. And you said if anybody else -- or, rather, "If nobody  
01:30 10 else does it other than me, then this information gets lost and  
11 that is a travesty," correct?

12 A. That's correct.

13 Q. "It is a travesty not just for me, but it's a travesty for  
14 academia and, you know, there has to be someone to go out and  
15 get the stuff," right?

16 A. It is important that the information becomes public.  
17 That's correct; yes.

18 Q. I'm quoting your words, right?

19 A. I suppose so. I don't recall those statements, though.

01:31 20 Q. Do you want me to show it to you?

21 A. That's fine. I trust you.

22 Q. Well, we'll put that aside.

23 Do you know Rita Katz?

24 A. I do know Rita Katz.

25 Q. Rita Katz has a group called SITE Institute, right?

1 A. I believe it's now called the SITE Intel Group. Yes;  
2 that's correct.

3 Q. She was born in Iraq, correct?

4 A. That's my understanding. That's correct.

5 Q. She's a native Arabic speaker, correct?

6 A. That's correct.

7 Q. And she has a history of infiltrating fundraisers and  
8 conferences hosted by radical Islamic groups, correct?

9 A. Not -- well, a form -- previous history.

01:31 10 Q. She's been known to wear burqas to attend these events,  
11 correct?

12 MR. CHAKRAVARTY: Objection to the level of detail  
13 about Ms. Katz, who isn't germane to this case, your Honor.

14 THE COURT: Let me see you at the side.

15 (Discussion at sidebar and out of the hearing of the  
16 jury:)

17 MR. CARNEY: His testimony, your Honor, was that he is  
18 the only person doing this undercover work. I'm bringing out  
19 the fact that he very well knows there's someone who actually  
01:32 20 does do undercover work who's in the same business he is. So  
21 I'm impeaching him that he's not the heroic figure that he  
22 portrays himself to be.

23 MR. CHAKRAVARTY: You can ask that without --

24 THE COURT: Well, okay. You can have it.

25 MR. CARNEY: Thank you.

1 (In open court:)

2 BY MR. CARNEY:

3 Q. Do you remember the question, Mr. Kohlmann?

4 A. If you can repeat it, please.

5 Q. Certainly. Ritz Katz has gone so far as to wear a burqa  
6 to a radical Islamic group meeting. Is that right?

7 A. I believe when we worked together she --

8 Q. Mr. Kohlmann?

9 A. I'm explaining. I believe when we worked together she did  
01:33 10 do something like that, but it's been a while.

11 Q. And she speaks Iraqi-accented Arabic in order to fit in at  
12 these conferences?

13 A. That's correct. Well, when she used to do this, that's  
14 correct.

15 Q. And her work has led to directly figuring out which Muslim  
16 groups in the United States were channeling funds for  
17 operations abroad. Isn't that true?

18 A. I don't know which groups you're talking about.

19 Q. Do you equate someone who disguises the appearance,  
01:34 20 changes the accent, goes into a group trying to blend in and  
21 not be recognized in order to get information to be doing  
22 undercover work --

23 A. Well, that's what I believe I was referring to when I used  
24 that word.

25 Q. Okay.

1 A. But --

2 Q. Do you equate that to standing on the edge of a crowd and  
3 watching a public protest?

4 A. That was one example out of a series that I had --

5 Q. Mr. Kohlmann, please.

6 A. Right.

7 Q. Do you equate that to standing outside a public protest as  
8 being undercover work?

9 A. Well, I wasn't outside the protests; I was inside the  
01:34 10 protests and I was with the protesters.

11 Q. Inside a building or outside?

12 A. It was outside, but it was in a corralled area where I was  
13 inside an area with the protesters and I was standing next to  
14 them and talking with them.

15 Q. Watching them?

16 A. No. No, I was talking with them and interviewing them and  
17 recording them. They understood -- or they thought they  
18 understood that I was with them, that I was part --

19 Q. How were you recording them?

01:35 20 A. With a video camera.

21 Q. When you record someone with a video camera out in public,  
22 do you consider that to be undercover work?

23 A. There were other individuals --

24 Q. Mr. Kohlmann, just try to answer this question. Do you  
25 consider that --



1 A. In that case it was, yes.

2 Q. Okay. Now, you produced a report that we've talked about  
3 for this case, haven't we -- haven't you?

4 A. That's correct; yes.

5 Q. And in this report you have numerous footnotes, don't you?

6 A. That's correct; yes.

7 Q. And those footnotes contain the authority for statements  
8 that you are making within the report, correct?

9 A. That's the purpose of the footnotes, correct.

01:35 10 Q. And some of these footnotes are in the documents that are  
11 completely in Arabic, aren't they?

12 A. That's correct; yes.

13 Q. There are numerous citations to what are called tertiary  
14 sources, correct?

15 A. It depends on what you define as "tertiary sources."

16 Q. Would you consider a newspaper article to be a tertiary  
17 source?

18 A. That's correct.

19 Q. And certainly, that would be among the least reliable --  
01:36 20 and my apologies to the journalists who might be in the room.  
21 But it's among the least reliable --

22 A. I would agree 100 percent. That's correct; yes.

23 Q. Now, let's just take a look at a couple of these. One of  
24 the footnotes appears on a -- from a website called  
25 scotsman.com. Do you recall that?

1 A. Yes, I do recall that.

2 Q. Another one is to the *Houston Chronicle*?

3 A. That's correct; yes.

4 Q. Another footnote you cite to is the *San Angelo Standard*  
5 *Times* in Corpus Christi, Texas?

6 A. That's correct; yes.

7 Q. You cited the *San Angelo Standard Times* in Corpus Christi,  
8 Texas, for the proposition that "39 Ways" is a popular book  
9 among terrorists.

01:37 10 A. I used that as a supporting statement.

11 Q. Did you -- you cited that as support for that statement.

12 A. I believe I was -- that was quoting something else,  
13 though.

14 Q. In Footnote 260 in your report.

15 A. Right. That's correct; yes.

16 Q. And you cited it for the proposition that "39 Ways" is,  
17 quote, a popular book, among others?

18 A. I believe I cited that to say that it was publicly known  
19 as a document that recruits -- as in it's widely known; it's  
01:37 20 not a secret.

21 Q. Right. Do you know who wrote that article?

22 A. Not offhand, no.

23 Q. Do you know his or her background?

24 A. I have no idea. Again, it was --

25 Q. I mean, could it be someone who's, you know, a high school

1 student interning at a newspaper?

2 A. In that particular case it didn't matter.

3 Q. You have no idea who wrote that.

4 A. Again, it didn't -- it wasn't -- for the point I was  
5 making it wasn't relevant.

6 Q. It's a footnote in your report, isn't it?

7 A. Yes. But the purpose of the statement is what's in  
8 question.

9 Q. Okay. Now, you do not consider yourself an expert on  
01:38 10 Islam, do you?

11 A. No, I consider myself to be a student of Islam, not an  
12 expert in Islam.

13 Q. You're not an expert on concepts of Islam, are you?

14 A. I'm an expert on certain concepts of Islam relating to  
15 transnational terrorist organizations but --

16 Q. Are you an expert in the concept of defensive jihad as the  
17 duty and obligation of every Muslim? Are you an expert in  
18 that?

19 A. I'm familiar with it but --

01:38 20 Q. That's not my question, Mr. Kohlmann, all right? I'm  
21 familiar with a lot of things. I'm asking you if you are an  
22 expert -- do you consider yourself an expert.

23 A. I've offered -- I've offered expert testimony about jihad,  
24 Fard al-Kifayh versus Jihad Fard al-Ain, before, but it's  
25 not --

1 Q. All right. Let's try this one more time. I'm going to  
2 keep asking this question until you answer it "yes" or "no."

3 MR. CHAKRAVARTY: Your Honor, it's an objectionable  
4 question in the first place --

5 THE COURT: Sustained.

6 MR. CHAKRAVARTY: Yeah.

7 BY MR. CARNEY:

8 Q. Supporting Islam is different from supporting al Qa'ida.  
9 Wouldn't you agree with that?

01:39 10 A. I would agree 100 percent.

11 Q. In all of the material you looked at, you never saw a  
12 single instance of Tarek Mehanna giving any money to support  
13 al Qa'ida, did you?

14 A. Not that I can recall.

15 Q. Now, you talked about certain views of al Qa'ida, correct?

16 A. That's correct.

17 Q. And al Qa'ida demands allegiance to their views on things,  
18 do they not?

19 A. For the most part, yes.

01:40 20 Q. Do you know what the Islamic concept of Aman is?

21 A. In what context?

22 Q. Are you an expert in Aman?

23 A. I don't consider myself to be an expert in Aman.

24 Q. What is your understanding of what Aman is?

25 A. You're talking about the faith, like Aman?

1 Q. Aman, A-M-A-N.

2 A. I'm not sure what you're referring to.

3 Q. Now, you were not a registered user of Tibyan, correct?

4 A. No, I did not have a registered account on at-Tibyan.

5 Q. Were you aware from looking at those materials that  
6 Tarek Mehanna was kicked off the Tibyan website because of the  
7 moderate nature of his views?

8 A. I'm generally aware of that, although I have not seen  
9 postings to that effect.

01:40 10 Q. I'd like to ask you some questions about videos. It's  
11 fair to say that the internet changed everything, did it not?

12 A. Well, that's a bit of a sweeping statement, but I'll take  
13 your point.

14 Q. It's meant to be a sweeping statement. I mean, the  
15 ability to communicate through the internet is the most radical  
16 development in your lifetime, isn't it?

17 A. Again, I'll take your statement as -- I'll accept your  
18 statement.

19 Q. Now, you said --

01:41 20 MR. CARNEY: I'm going to be going into an entirely  
21 new area here.

22 THE COURT: Keep going.

23 MR. CARNEY: All right. Thank you.

24 BY MR. CARNEY:

25 Q. You said that it's very important that videos produced by

1 al Qa'ida be seen by people?

2 A. It's essential, yes.

3 Q. Essential for their mission, correct?

4 A. That's correct.

5 Q. And that these videos are often issued in Arabic, correct?

6 A. They are issued usually in Arabic and in English.

7 Q. Well, they're pretty useless for someone who doesn't speak  
8 Arabic to see these videos.

9 A. No, I would disagree with that.

01:42 10 Q. You testified yesterday that translating these videos to  
11 English helps al Qa'ida tremendously --

12 A. It does.

13 Q. -- as well as giving people an opportunity to see these  
14 al Qa'ida videos.

15 A. That's true.

16 Q. Is that correct?

17 A. Yes.

18 Q. And that it is critical to the success of al Qa'ida that  
19 these videos be available for people to read?

01:42 20 A. That's correct; yes.

21 Q. To see and to read in English, correct?

22 A. That's correct.

23 Q. Now, are you familiar with the NEFA website?

24 A. I am familiar with the NEFA website.

25 Q. And as we mentioned, you're still identified as one of the

1 five people on the website home page, correct?

2 A. I'm a consultant on their behalf, correct.

3 Q. But are you still listed on the home page website as one  
4 of the --

5 A. I haven't seen their website in months, but I'm assuming  
6 I'm still on there.

7 Q. Now, have you seen that website recently?

8 A. No.

9 Q. Are you familiar with it generally?

01:43 10 A. Generally speaking, yes.

11 MR. CARNEY: Your Honor, may we call up the NEFA  
12 website, please? We have the ability to do so.

13 MR. CHAKRAVARTY: I'm going to object, your Honor.

14 THE COURT: Let me see you.

15 (Discussion at sidebar and out of the hearing of the  
16 jury:)

17 MR. CHAKRAVARTY: Your Honor, it's hearsay and it's no  
18 way to impeach him. The fact that he is familiar with the  
19 website as it appeared months ago, was his testimony, is  
01:43 20 irrelevant to NEFA, what -- the activities NEFA is doing. If  
21 it's being shown in front of the jury, then it's actually  
22 evidence, and the website is being actually offered into  
23 evidence based on this witness's familiarity with a website as  
24 it appeared several months ago. It's the content of the  
25 website.

1 MR. CARNEY: The reason the prosecutor doesn't want  
2 this to be shown is on the NEFA website they have 37 al Qa'ida  
3 videos that you can click on and watch, and I want to show that  
4 some of the videos that the prosecutor has talked about is  
5 publicly -- publicly -- available on this site for someone to  
6 go to, just click a button. And we're going to watch some  
7 videos, with the Court's permission.

8 MR. CHAKRAVARTY: He can ask one question about that,  
9 or two. But you don't need to show it.

01:44 10 MR. CARNEY: We've seen so many videos in this trial.  
11 These are short videos. And I'm only going to play four, with  
12 your permission.

13 THE COURT: Okay. The evidence is being offered for  
14 the fact of the availability?

15 MR. CARNEY: Correct.

16 THE COURT: Okay. The website may contain assertions  
17 which I think would be hearsay.

18 MR. CARNEY: They're not offered for the truth.

19 THE COURT: Right. So I guess you would make that  
01:45 20 clear to the jury. Your point is to show what is accessible to  
21 someone going to the website but not the truth of the --

22 MR. CHAKRAVARTY: But the video itself doesn't make  
23 the probative point.

24 MR. CARNEY: I'm showing the same videos,  
25 just -- exactly --



1 THE COURT: What are the videos that you want to show?

2 MR. CARNEY: One of them is of a training camp,  
3 another is a speech of Osama bin Laden, another one is --

4 THE COURT: Are they the same that we've seen or are  
5 they just the same genre?

6 MR. CARNEY: The exact same genre.

7 MR. CHAKRAVARTY: The videos that are the same genre  
8 that are not connected with --

9 THE COURT: You can disagree with the significance of  
01:45 10 the point, but I think it can be made.

11 How long will this take?

12 MR. CARNEY: Probably ten minutes.

13 THE COURT: All right.

14 MR. CARNEY: Because the -- I don't intend to show  
15 more than a minute or two of each, and then I'll just stop and  
16 move to the next. I've identified four that have four  
17 different categorizations. I don't expect any are going to be  
18 horrifying by any means.

19 MR. CHAKRAVARTY: We haven't seen the videos. Again,  
01:46 20 this is the first we're hearing of them.

21 MR. CARNEY: I alerted you yesterday that I was going  
22 to call up the NEFA website and play videos from it.

23 MR. CHAKRAVARTY: I bet there are a lot of videos on  
24 the NEFA website.

25 THE COURT: All right. And when you've done this,

1 what's the estimate for the rest of your examination, just so I  
2 have some sense?

3 MR. CARNEY: Probably I'll be done around 12:30, if  
4 not earlier. I'm -- I have about two or three other areas to  
5 go into, but I'm trying to move with alacrity. So that's why I  
6 thought we will be allowed to -- the government will be able to  
7 rest today. You have a half-hour to do a redirect.

8 MR. CHAKRAVARTY: All right.

9 THE COURT: Okay.

01:46 10 MR. CARNEY: Thank you.

11 (In open court:)

12 THE COURT: Now, does this have an exhibit number?

13 MR. CARNEY: Yes, it does, your Honor.

14 MR. OH: No, it doesn't.

15 MR. CHAKRAVARTY: We haven't seen it, your Honor.

16 MR. CARNEY: We've numbered it.

17 THE COURT: Is this live?

18 MR. CARNEY: Yes.

19 MR. CHAKRAVARTY: There are logistics issues here as  
01:47 20 well which presents problems.

21 THE COURT: We have to capture for the record --

22 MR. CARNEY: I expect to show four examples. We have  
23 them on CD and we have numbered them as prospective exhibits so  
24 that we'll be able to give them to Mr. Lyness. And what the  
25 jury will be watching live will be -- is memorialized for part

1 of the record.

2 MR. CHAKRAVARTY: We would appreciate that as well,  
3 your Honor, because we haven't seen it.

4 MR. CARNEY: The first one I would be calling up would  
5 be -- what number is it, John? Oh, 1? The first would be --

6 THE COURT: Let me see you again.

7 (Discussion at sidebar and out of the hearing of the  
8 jury:)

9 MR. CARNEY: This is pretty cool, huh?

01:48 10 THE COURT: Well, there are a couple of issues, some  
11 technical. If it's a live event, there has to be a way of  
12 capturing it for the record. And I think there is, but I'm not  
13 able to say technically what that is.

14 MR. CARNEY: I could help your Honor out.

15 THE COURT: My other thought is, this may need some  
16 foundation, and maybe you need another witness to get this in.  
17 This may be a defense point rather than a cross-examination  
18 point.

19 MR. CARNEY: Well, I'll ask this witness if he  
01:48 20 recognizes the NEFA home page and do they contain videos on the  
21 home page. They have a button on it that you click and you see  
22 that video, and we've got that exact video on the CD to  
23 memorialize it for the record. So there's nothing like live  
24 testimony or the possibility of something being different.  
25 It's just the novelty of doing it in real time. But --

1 MR. CHAKRAVARTY: Your Honor, I beg to differ, your  
2 Honor. When we haven't seen what's on the web page, where  
3 there is -- you know, there could be any number of --

4 THE COURT: Yeah. Okay. Let's do this: Let's take  
5 the recess. Why don't you jointly look at the website, see  
6 what it looks like today.

7 MR. CARNEY: Sure.

8 THE COURT: And meanwhile, let's consult with one of  
9 our techies and see if there's anything they could do for us.

01:49 10 MR. CARNEY: Okay. Thanks.

11 (In open court:)

12 THE COURT: We'll take the morning recess.

13 THE CLERK: All rise for the Court and the jury. The  
14 Court will take the morning recess.

15 (The Court and jury exit the courtroom and there is a  
16 recess in the proceedings at 10:59 a.m.)

17 (Court in at 11:30 a.m.)

18 MR. CHAKRAVARTY: Your Honor, I thought it made sense  
19 -- I'm sorry. I thought it made sense just to hash out what's  
02:21 20 going to happen in the next few minutes before it does,  
21 hopefully. Mindful of the fact that the witness is still on  
22 the stand, we can approach sidebar if your Honor prefers, or we  
23 can talk through the logistics.

24 THE COURT: I don't think that's necessary.

25 MR. CHAKRAVARTY: The government maintains its

1 objection to the showing of the website and the specific --  
2 counsel has proposed -- excuse me. I have a cough drop in my  
3 mouth, not to be rude, your Honor -- the navigating to the  
4 website, is my understanding, which they have memorialized by  
5 having a printout which would later be uploaded into the JERS  
6 system.

7 THE COURT: We can do it immediately, as I understand  
8 it. There's a camera feature that, regardless of the feed, we  
9 can capture the screen. And that's what I would propose to do,  
02:22 10 one or two pages, whatever it might be that is necessary simply  
11 to show where we were and what the jurors saw.

12 MR. CHAKRAVARTY: The preservation of the record, it  
13 sounds like, because of Mr. Gross' work, we're going to be able  
14 to do.

15 The broader objection, your Honor, is, the more we  
16 thought about it, the more we saw the stuff, the more we  
17 considered the rules of evidence, and 401 in particular, it's  
18 not clear -- regardless of this witness' competency, which is  
19 -- holding aside that issue, the point -- the only point which  
02:23 20 it seems to be that -- the existence of other videos on the  
21 internet bears on this trial is the fact that there are other  
22 videos available on the internet. It surely cannot be the case  
23 that every other publicly available video would be admissible  
24 in this case by either party.

25 The key there is how does it advance the ball, one way

1 or the other, in terms of the two theories of the defense? The  
2 risk here, the 403 issue is, by introducing other videos or  
3 evidence of other videos available on the internet, aside from  
4 just the witness saying I know these are publicly available,  
5 he's already testified to that.

6 The risk there is the jury starts to construe the fact  
7 that publicly available videos, which the defendant may have  
8 also done -- if they're publicly available, then we don't  
9 necessarily have to apply the law as the Court is going to  
02:24 10 instruct us as to whether the defendant has violated the  
11 elements of the offenses but, rather, that the actus reus, so  
12 to speak, even though that's not what the government's theory  
13 of the case is, because videos have been introduced by the  
14 government and the defense has now introduced the same videos  
15 which are publicly available, therefore, there must not be  
16 anything illegal about it.

17 That is an inappropriate question for the jury because  
18 it's seeking jury nullification. It's not getting to the  
19 narrow issue, which is, what is the purpose for which the  
02:24 20 defendant was offering his services and expert advice and  
21 assistance and was in coordination with al Qa'ida. Those  
22 questions are not answered by playing these videos.

23 MR. CARNEY: This isn't about nullification. This is  
24 about presenting evidence that these videos, which the  
25 government has put so much emphasis on and which the witness

1 has put so much emphasis on, are, in fact, readily available by  
2 a website that has not only -- is not only presenting them but  
3 translating them.

4 THE COURT: I think the question posed by the  
5 government is: And what does that prove if they are available?  
6 What's the significance of the fact of their availability for  
7 the issues in the case?

8 MR. CARNEY: That the witness and the government, as  
9 contended, that things done by the defendant were critical or  
02:25 10 essential to getting out al Qa'ida's message. I'm undermining  
11 that by showing that al Qa'ida's message was readily available  
12 on the internet, including on this site, where they posted  
13 these and translated these.

14 THE COURT: Well, on that theory, then the relevant  
15 time would be 2005, 2006, wouldn't it? Not today, that is.  
16 Availability today doesn't prove that point.

17 MR. CARNEY: NEFA has been in operation since -- the  
18 entire time during this.

19 THE COURT: I guess, if you had evidence of what they  
02:26 20 had on in 2006, I would understand the logical connection. But  
21 it seems to me the availability in 2011 is not particularly  
22 relevant.

23 MR. CARNEY: It will be seen, I expect, that they have  
24 been posting things for years.

25 THE COURT: Well, I think the temporal problem is a

1 serious one for the defense point. So I think I would sustain  
2 the objection on that ground.

3 MR. CARNEY: Your Honor, the point is that doing this  
4 type of thing is essential to getting al Qaeda's message out.  
5 That's the point. And what I'm showing is al Qaeda's message  
6 gets out by other sources, like this website.

7 THE COURT: Well, I think if the point were made for  
8 2006, it would be -- you would be over that hurdle. But  
9 showing that it's now, five years later, available doesn't  
02:27 10 necessarily -- might be the same. I don't know whether it's  
11 the same.

12 MR. CARNEY: I think it goes to the weight of the  
13 evidence, your Honor, given that NEFA has been in business  
14 during the entire time of this Indictment -- that the  
15 Indictment is covering.

16 THE COURT: Well, as I say, I don't know what the  
17 answer is about 2006. It might be that it was identical and  
18 all the same things were available. But at least there would  
19 have to be evidence that that was the case in 2006 for it to  
02:27 20 bear on the point that you want to make.

21 MR. CARNEY: Or 2008 --

22 THE COURT: I know the government has further  
23 objections to the point to be made. But even to that limited  
24 extent, it seems to me that it's -- it's not relevant in a  
25 temporal sense.



1 MR. CARNEY: Your Honor, one of the videos is from  
2 2006.

3 THE COURT: That doesn't mean it was available in  
4 2006. I don't know. Maybe. But this is why I said at the  
5 side, maybe you need a different witness. Maybe you need  
6 somebody from NEFA or something. I don't know. I think the  
7 time is a serious issue. So on that basis, I would sustain the  
8 objection.

9 MR. CARNEY: May we voir dire this witness?

02:28 10 THE COURT: Okay.

11 MR. CHAKRAVARTY: Seems like voir dire would only go  
12 to his authentication of the material, not necessarily the  
13 chronological issue of -- he doesn't even know what the videos  
14 are that the defense is seeking to offer.

15 THE COURT: Well, any witness, this witness or any  
16 other, would have to be able to say what the site was in 2006.

17 MR. CARNEY: Okay.

18 THE COURT: Go ahead and ask him.

19 VOIR DIRE BY MR. CARNEY:

02:28 20 Q. Mr. Kohlmann, how long have you been involved with NEFA?

21 A. Since July 15, 2005.

22 Q. Were you involved in setting up the website?

23 A. No.

24 Q. Were you aware that a website was set up?

25 A. Yes.

1 Q. Do you ever look at the website?

2 A. I haven't looked at it in awhile, but I did -- I obviously  
3 -- some of the material that -- from my archives ended up on  
4 the website.

5 Q. Is some of that material videos?

6 A. Yes, that's correct.

7 Q. Is some of that material documents of statements issued by  
8 people like Osama bin Laden or Doctor Zawahiri?

9 A. That's correct, yes.

02:29 10 Q. Were those documents then put on the website to be  
11 available?

12 A. Yes. But my recollection is that it was all post-2006.

13 Q. When did this start going on?

14 A. The first video that I believe was -- I know the first  
15 video that was uploaded to the site was uploaded in mid-2006,  
16 and that was a video of a protest rally in London. The next  
17 video wasn't put on the site, I think, until mid-2007.

18 Q. When were the first documents put on the website?

19 A. That, I don't recall. I would -- my best recollection, it  
02:29 20 would be 2008, 2007, 2008.

21 MR. CARNEY: 2007 is within the period of Indictment  
22 and prior to the defendant's arrest.

23 THE COURT: I don't know if you have any voir dire  
24 questions.

25 MR. CARNEY: The defendant was arrested in October, I

1 believe, of 2008. And that's fully within the period of the  
2 Indictment.

3 MR. CHAKRAVARTY: Your Honor, I'm not sure exactly --  
4 I don't know why, but -- I'm not sure what it was that was in  
5 2007, what was published. Maybe I could just ask Mr. Kohlmann.

6 Q. (By Mr. Chakravarty) What's your understanding of the  
7 history of what things posted up on the NEFA?

8 A. My recollection is that most of the stuff that was posted  
9 on the site was not posted until early 2008 onwards. I believe  
02:30 10 the dates reflect that. I know that there was a video uploaded  
11 in mid-2006 because of the fact that I recorded it and it got  
12 several million views. Again, that was a video of -- an  
13 original video that I recorded of a protest rally in London.

14 I don't believe there are more than two or three videos at  
15 most until the -- before the end of 2007, at most. It wasn't  
16 -- because I had only -- I had only started working there as of  
17 late 2005. There just wasn't -- I was the source of a lot of  
18 their video content.

19 THE COURT: Okay. Well, here's the ruling: The  
02:31 20 objection is sustained at least through this witness. Maybe  
21 you can develop evidence you can present in your case to get  
22 this same stuff in. I don't know. But for now, with this  
23 witness, the objection is sustained.

24 We'll resume with another topic. We'll get the jury  
25 in.

1 MR. CARNEY: Your Honor, may I make an offer of proof  
2 of what this evidence is?

3 THE COURT: Briefly, because I think the record  
4 already reflects it, but go ahead.

5 MR. CARNEY: The offer of proof would be that NEFA has  
6 put videos and translations of documents on its site since at  
7 least 2006 and 2007, and including 2008, during the period of  
8 this Indictment. These videos have included statements by  
9 Osama bin Laden, Doctor Zawahiri, other al Qa'ida operatives;  
02:32 10 that they've included both videos and dozens of statements by  
11 these people.

12 And I submit that the prosecutor's objection goes to  
13 the weight of the evidence, not the admissibility. The  
14 essential point is NEFA was offering this type of material  
15 during the period of Indictment, and it was not necessary for  
16 Tarek Mehanna to be the source of it.

17 And I submit, your Honor, that this is probably the  
18 most critical evidence that we will be offering in this trial  
19 to undermine the government's theory that, as the witness has  
02:32 20 testified, Tarek Mehanna was doing things critical to people  
21 seeing what al Qa'ida was saying and showing.

22 THE COURT: Yeah. It's far from clear you won't be  
23 able to get such evidence in in your case. What I'm saying is,  
24 with this witness, at this time, as cross-examination, the  
25 objection is sustained.

1           Okay. So let's get the jury in and continue.

2           (Jury in at 11:43 a.m.)

3           THE COURT: Okay.

4           Q.     (By Mr. Carney) Mr. Kohlmann, you indicated that you have  
5           been with the Nine/Eleven Finding Answers organization since  
6           2005, is that correct?

7           A.     Since July 15, 2005, that's correct, yup.

8           Q.     How many people were employed by the organization at that  
9           time?

02:35 10          A.     I don't know the total number.

11          Q.     What would be your approximate estimate?

12          A.     I really don't know.

13          Q.     Were you a senior person in the organization?

14          A.     I was a consultant-analyst, but I -- their base of  
15           operations is in Charlestown, South Carolina, and I've only  
16           been there on three or four occasions.

17          Q.     You are listed on the web page to this day as being a  
18           senior investigator associated with NEFA, aren't you?

19          A.     Yeah. I'm an investigator but --

02:35 20          Q.     You've certainly looked at their website over the years,  
21           haven't you?

22          A.     That's correct, yes.

23          Q.     It's fair to say that, beginning in 2005 and continuing  
24           until today, NEFA has made videos available on its website?

25          A.     Video clips, yes.

1 Q. And these video clips have included excerpts from videos  
2 made by Osama bin Laden, is that correct?

3 A. That's correct, yes.

4 Q. Excerpts from videos by Doctor Zawahiri, is that right?

5 MR. CHAKRAVARTY: Objection, your Honor.

6 THE COURT: Overruled. This is --

7 A. Doctor al-Zawahiri, yes, that's correct.

8 Q. Thank you for correcting me.

9 And other people involved with al Qa'ida, isn't that  
02:36 10 correct?

11 A. That's correct, yes.

12 Q. And when NEFA has put these videos on its site, they are  
13 in a format so that someone can click on them and watch them,  
14 correct?

15 A. It depends. I think it changed -- I'm not really involved  
16 with that area of the mechanics of the --

17 Q. The point of putting a video on a website is so that  
18 someone who travels to that website can view the video,  
19 correct?

02:36 20 A. Yeah, that's true, yeah.

21 Q. There's usually a big button in the middle that you put  
22 your pointer on and click and that starts the video, correct?

23 A. I believe so, yes.

24 Q. And the videos always have sound with them, correct?

25 A. I don't know if they always do. Most of the time they do.

1 Q. And if there are captions on the videos on this website,  
2 there's always a translation of the -- or most of the time a  
3 translation of the video, correct?

4 A. I don't know if it's most of the time, but some of the  
5 time definitely, yes.

6 Q. And that translation is from the original Arabic to  
7 English?

8 A. That's correct, yes.

9 Q. And so by going onto this website, a person is able to  
02:37 10 look at excerpts from an al Qa'ida video?

11 A. That's correct, yes.

12 Q. And hear what's being said about this al Qa'ida -- by this  
13 al Qa'ida video in many instances?

14 A. If there's audio, that's correct, yes.

15 Q. In addition, since 2005, 2006, NEFA has also posted on its  
16 website documents that you have provided to them, correct?

17 A. Yes, they have.

18 Q. And these include statements by Osama bin Laden, correct?

19 A. That's correct.

02:37 20 Q. They include statements by Doctor Zawahiri?

21 A. Doctor al-Zawahiri, that's correct, yes.

22 Q. Can you say that one more time, please?

23 A. Al-Zawahiri.

24 Q. Al-Zawahiri. Okay.

25 He's the No. 2 person?

1 A. Well, now the No. 1, but then the deputy commander of al  
2 Qa'ida, that's correct.

3 Q. There would be documents that would talk about Zargawi?

4 A. Abu Musab al-Zarqawi, yes, there were.

5 Q. He was the head of al Qa'ida in Iraq?

6 A. That's correct.

7 Q. And there are other al Qa'ida members who would be present  
8 on videos, right?

9 A. Presumably so, yes.

02:38 10 Q. The videos would include things like a training camp  
11 scene, wouldn't it?

12 A. I believe there is a video or video clip of a training  
13 camp, that's correct, yes.

14 Q. By "training camp," you mean scenes of people going  
15 through calisthenics or running around with guns or things that  
16 presumably occur at training camps?

17 A. Those are the kind of activities that, generally speaking,  
18 are shown in videos of training camps.

19 Q. Now, in terms of the documents that are available on this  
02:39 20 site, there's actually a link or a title that says "Featured  
21 Documents" or something to that effect?

22 A. It rings a bell.

23 Q. And these include original documents that you, as an  
24 investigator, obtained, is that correct?

25 A. I believe so, yes.



1 Q. In fact, without any false modesty, you were the one who  
2 personally would seek out and obtain these documents as the  
3 chief investigator?

4 A. Some of them.

5 Q. And many, many of them -- of these documents, were  
6 released and allegedly are the statements of Osama bin Laden,  
7 correct?

8 A. There's a lot of documents on that site. There are some  
9 statements from Osama bin Laden.

02:40 10 Q. And these statements always appear on the site in a  
11 translated format to English, is that correct?

12 A. That's correct, yes.

13 Q. In fact, this is primarily a site for English-speaking  
14 people; is that fair to say?

15 A. It's supposed to be for analysts and scholars and  
16 policymakers, that's correct, yes.

17 Q. Is there any fee to go to the site?

18 A. No. We don't charge.

19 Q. Do you charge or do you require people to get a password?

02:40 20 A. Maybe for certain areas of the site, but I'm not -- not  
21 for the main area of the site.

22 Q. Is it freely available to anyone who has a computer, an  
23 internet access?

24 A. It is.

25 Q. Now, the documents that are posted by Osama bin Laden or

1 Doctor al-Zawahiri, these are presented in full format --

2 A. Not --

3 Q. -- is that true?

4 A. No, that's actually not true.

5 Q. They're edited?

6 A. They are edited.

7 Q. Is that because some of them go on for dozens of pages?

8 A. No.

9 Q. Why are they edited?

02:41 10 A. We decided to remove material from there that was not  
11 germane or we felt was not necessarily germane to the work of  
12 scholars, policymakers, academics, law enforcement.

13 Q. And those certainly are people that would reference this  
14 site, go to this site to get these original materials, wouldn't  
15 they?

16 A. They have, yes.

17 Q. Do you believe that law enforcement can rely on the  
18 accuracy of the documents that you put on this site?

19 A. I believe that they can.

02:41 20 Q. Do you believe that scholars can rely on the accuracy of  
21 -- the authentic nature of the videos on these websites?

22 A. I think they can.

23 Q. Indeed, you yourself can personally attest to their  
24 authenticity in many instances, can't you?

25 A. Well, to the material that came from my archive, but there

1 are other investigators. So I can't say that universally.

2 Q. Let's limit it to the material you provided from your  
3 archive. It's fair to say that you are very confident in its  
4 authenticity, are you not?

5 A. I'm confident.

6 Q. Now, it's fair to say, like most sites, there are  
7 additions constantly being put on a website to improve it?

8 A. You're saying -- well, not constantly. I think it varies  
9 over time.

02:42 10 Q. Occasionally, there are things added to a website?

11 A. You're speaking about NEFA or --

12 Q. Yes, sir.

13 A. Okay. I don't really -- I'm not involved in posting  
14 material onto that site. I haven't been for a very long time.  
15 So I don't really know. I know there's new material added over  
16 time, but I'm not sure how constant that is.

17 Q. If there is a significant new video, an opportunity will  
18 be made to try to put it on the site, isn't it?

19 A. Not necessarily, no.

02:43 20 Q. If there's an important document that scholars or law  
21 enforcement would find valuable, is there an effort to try to  
22 identify that document and post it on the site?

23 A. Documents, yes; video, not as much. But documents, yes,  
24 that's definitely true.

25 Q. And there's no question that this material that we're

1 talking about is authentic al Qa'ida material?

2 A. As far as I'm aware, yes, it's authentic, or at least the  
3 material that I personally contributed, yes.

4 MR. CARNEY: May we approach, please?

5 (SIDEBAR CONFERENCE AS FOLLOWS:

6 MR. CARNEY: Your Honor, I renew my offer and submit  
7 that I've now laid a sufficient foundation. I use this as an  
8 example. Let's say that your Honor, back in the day, was  
9 presiding over a murder trial in the superior court. Normally,  
02:44 10 there would be a view. Well, it's impossible to capture on a  
11 view what a scene looked like exactly on the day of the crime.  
12 But a view is always allowed or photos taken after the day of  
13 the crime -- in fact, well later -- to give a jury an  
14 understanding of what it looked like.

15 Here, the witness has made it clear that there may be  
16 videos that have been posted now that were created in 2010 or  
17 2011. That goes to the weight of the evidence. In terms of  
18 showing this jury what this NEFA website looks like in terms of  
19 documents and videos, I submit the foundation has been  
02:45 20 presented enough, and it comes within the relevant Indictment  
21 period, that it will give the jury an idea of what people,  
22 during the time frame of this Indictment, could have seen going  
23 to this site.

24 THE COURT: Well --

25 MR. CARNEY: Deficiencies go to the weight of the

1 evidence.

2 THE COURT: The witness has described in general terms  
3 the kinds of things that he recalls from the relevant time  
4 period. That makes most of your point already. Whether a  
5 specific exhibit offered relates to that time period, we don't  
6 have a foundation for. And so -- anyway --

7 MR. CARNEY: The foundation --

8 THE COURT: He said that there was stuff on there. It  
9 was Osama bin Laden and the other fellow and --

02:46 10 MR. CARNEY: I don't know why I can't say his name.

11 THE COURT: You already have that. Now, on proper  
12 foundation, authentication, you could get a 2005 video -- but,  
13 anyway, I don't want to repeat. Things haven't changed except  
14 you've made much of your point.

15 MR. CHAKRAVARTY: If this comes up again, your Honor,  
16 maybe not with this witness but another witness, we don't agree  
17 with the view analogy here. This is actually a view in a  
18 different --

19 THE COURT: We don't have to try other cases. There  
02:46 20 would have to be a foundation that what would be seen on the  
21 view would be substantially similar to what --

22 MR. CARNEY: That is what this evidence does. It  
23 shows the jury what the website page looks like and to be able  
24 to see the documents or the videos. In a case where the  
25 government has played so many --

1 THE COURT: I'm sure the jurors know what websites  
2 generally look like when they have links, okay. To say that it  
3 had this link because it has one five years later, we cannot  
4 say. Somebody might eventually be able to say that, but it  
5 doesn't exist now.

6 . . . END OF SIDEBAR CONFERENCE.)

7 Q. Mr. Kohlmann, I'd like to shift to another area.

8 A. Okay.

9 Q. You mentioned yesterday that you are familiar with the  
02:47 10 document 39 Ways to Serve and Participate in Jihad, is that  
11 correct?

12 A. I am, yes.

13 Q. Now, this document gives ways that a person can  
14 participate in Jihad that do not involve going to a battlefield  
15 and fight, is that correct?

16 A. I think some of them actually reference physical violence,  
17 but there are other things in there which do not necessarily  
18 involve physical violence, that's correct, yes.

19 Q. And so this is a guide, in part, for people who are not  
02:48 20 going to engage in physical violence because it is suggesting  
21 other ways to fulfill the duty and obligation to Jihad?

22 MR. CHAKRAVARTY: Objection, your Honor.

23 Q. Do you agree with that?

24 THE COURT: Overruled. He may answer.

25 A. No, that's not correct. The alternative methods are

1 non-violent ways in which one can support violent Jihad. In  
2 other words, you can support other people engaged in violent  
3 Jihad. While those methods may themselves not involve physical  
4 violence, it is still about the idea of supporting violent  
5 Jihad.

6 Q. Now, you testified that this is an al Qa'ida document, is  
7 that correct?

8 A. It was originally an al Qa'ida document, yes.

9 Q. There is no reference to al Qa'ida anywhere in this  
02:49 10 document, is there?

11 A. In the original or in the English translation?

12 Q. In the original or English translation.

13 A. I actually believe the original document was released  
14 directly through an al Qa'ida website. So I --

15 Q. Which website was that?

16 A. The exact URL? It was the website of Sawt al-Jihad. It  
17 was the website of Voice of Jihad Magazine. It was available  
18 at various different locations including  
19 pagesforfree.biz/image444.

02:49 20 Q. In the English translation --

21 MR. CHAKRAVARTY: I don't think he's done with his  
22 answer.

23 MR. CARNEY: I'm sorry.

24 A. Hostforfree.com/image 555. It was on a website -- the  
25 website kept getting shut down. It was a temporary website, so

1 it kept going on and off.

2 Q. So there were a number of websites where someone could  
3 access this document?

4 A. The al Qa'ida -- the official al Qa'ida website, yes.

5 Q. The English translation that was done makes absolutely  
6 zero references to al Qa'ida?

7 A. Not that I can recall.

8 Q. There's nothing in the English translation that talks  
9 about how to make a bomb or how to make a suicide vest, is  
02:50 10 there?

11 A. No. That's correct. That information is not in there.

12 Q. And you've identified the al Qa'ida logo, correct?

13 A. There's a couple of different ones, but --

14 Q. And you've told us that a way a person could know that a  
15 document was an authentic al Qa'ida document was the presence  
16 of the al Qa'ida logo, is that right?

17 A. That's correct, yes.

18 Q. In the translation done by Tarek Mehanna, there is no al  
19 Qa'ida logo, is there?

02:50 20 A. Not on the translation, no.

21 Q. There are plenty of references and quotations from the  
22 Qur'an, correct?

23 A. Yes, that's true.

24 Q. There are plenty of quotations from Hadiths, correct?

25 A. That's true.



1 Q. But no references and no logo connecting this document in  
2 his translation to al Qa'ida, isn't that true?

3 A. I'm not a hundred percent sure. The only area where there  
4 might be a reference would be in the biography of the author.

5 Q. Have you seen that?

6 A. I don't -- honestly, I don't recall whether -- some of  
7 these documents have that, some don't. I'm not sure if that  
8 particular one has the bio in there.

9 Q. And you don't even remember for sure what the bio says?

02:51 10 A. Oh, I know what the bio says. I just don't know if the  
11 English-translated version that you're talking about has a copy  
12 of that biography in there.

13 Q. If it doesn't, then this translation has no reference  
14 whatsoever to al Qa'ida?

15 A. Not that I can recall -- aside from that, not that I  
16 recall.

17 Q. So aside from -- if the biography is not in there, this  
18 document does not contain a reference to al Qa'ida or a logo to  
19 al Qa'ida, does it?

02:52 20 A. The translated version, the English translation?

21 Q. Yes.

22 A. Not that I'm aware of, not that I can recall anyway.

23 Q. Now, you testified about the fact that there was a video  
24 biography of Umar Hadeed?

25 A. No. I don't think I did.

1 Q. Was there a video focused on the life of Umar Hadeed?

2 A. Not that I'm aware of, no.

3 Q. What is "The Expedition of Umar Hadeed"?

4 A. That's not about Umar Hadeed. The title is "The Ghazwah  
5 Umar Hadeed." But that's not -- the subject of the video --  
6 it's about an operation that was named in honor of Umar Hadeed.

7 Q. Now, on NEFA, there is the story of this operation, Umar  
8 Hadeed, is there not?

9 A. I don't know. There might be.

02:52 10 Q. In fact, it's translated into English, isn't that true?

11 A. I don't know.

12 Q. Now, you said during your testimony that the defendant,  
13 Tarek, was asked to do a -- some editing of a Wa Yakoon video?

14 A. I don't know. Are you referring to my report?

15 Q. Yes. No, to your testimony.

16 A. I don't think I ever testified to that.

17 Q. You're aware of the fact that Tarek never did anything in  
18 regard to that video?

19 A. I'm not sure I'm aware of that either. My only knowledge  
02:53 20 of a translation of Wa Yakoon was on the hard drive that I  
21 reviewed, there was a partial English translation of the video,  
22 Wa Yakoon, that was in a document, a Microsoft Word document.  
23 But that English translation was never -- I don't believe it  
24 was ever published. I don't believe it was ever released. But  
25 that's --

1 Q. There's no evidence that Tarek wrote it, is there?

2 A. I'd have to take a look at the Microsoft Word document and  
3 see if there's an author listed. I actually -- offhand, I  
4 don't recall whether or not there was one.

5 Q. Is Tarek British?

6 A. I don't believe so.

7 Q. Are you familiar with the fact that British citizens write  
8 English words in a slightly different way?

9 MR. CHAKRAVARTY: Objection, your Honor.

02:54 10 THE COURT: Sustained.

11 MR. CARNEY: He's nodding when I'm asking.

12 MR. CHAKRAVARTY: Objection. Beyond the scope.

13 THE COURT: Sustained.

14 Q. Did you see British forms of spelling in that English  
15 translation?

16 MR. CHAKRAVARTY: Objection, your Honor.

17 THE COURT: You may answer that.

18 A. I don't recall.

19 Q. If there were British spellings of words in that  
02:54 20 translation, would that suggest to you that it was not authored  
21 by Tarek?

22 A. Not necessarily. I've actually seen American Jihadis from  
23 Pennsylvania use British spellings in their English  
24 translations because of the fact that a lot of the people that  
25 read these are in the United Kingdom. So it doesn't really --

1 one way or the other, there's really no way of knowing.

2 Q. Do you see any document written by Tarek ever on that  
3 computer that used British spellings of words?

4 A. I don't know. The only document --

5 Q. Did you see anything demonstrably written by Tarek that  
6 used British spellings of words?

7 A. I really -- I don't recall.

8 Q. Now, you've said that disseminating information by al  
9 Qa'ida is essential to its success, is that right?

02:55 10 A. That's correct, yes.

11 Q. It's also essential because it keeps al Qa'ida in the  
12 news, isn't that right?

13 A. I think that's fair to say.

14 Q. Haven't you said that by repeating these things that it  
15 allows al Qa'ida to suggest it has significance, correct?

16 A. That's one part of it, I think, yes.

17 Q. And haven't you also written that one can argue that  
18 absent the constant and reassuring broadcasts by al Qa'ida the  
19 general public would begin to forget about Osama bin Laden and  
02:56 20 the al Qa'ida agenda?

21 A. Yes, I did write that.

22 Q. Now, you're aware that Tarek never went to the website  
23 Al-Shamukh, correct?

24 A. I am not aware either way, although I'm assuming he hasn't  
25 only because of the fact that the website has only been around

1 since mid-2008.

2 Q. You never found any reference on the computer to the  
3 website Al Ansar, correct?

4 A. You're talking about Muntada Al Ansar as in Younis  
5 Tsouli's Muntada Al Ansar?

6 Q. Yes.

7 A. Not that I can recall, no.

8 Q. You didn't find Al-Fajr on Tarek's computer?

9 A. You mean the Al-Fajr Media Center?

02:57 10 Q. Yes.

11 A. No, I don't believe so.

12 Q. The only reference to Al-Ekhlaas was a screen shot that  
13 had been sent to him, correct?

14 A. Well, I don't know whether it was sent to him or not. I  
15 know, on the hard drive, there were image -- screen shots of  
16 Ekhlaas and Al-Hesbah.

17 Q. But no indication that those sites had actually been  
18 visited?

19 A. Beyond that, no.

02:57 20 Q. You're aware of the fact that Tarek was arrested when he  
21 was at the airport?

22 A. Actually, I wasn't aware of that, but --

23 Q. I want you to assume that he was arrested as he was  
24 preparing to fly to Saudi Arabia and work at the King Fuad  
25 Medical City. Did the prosecutor show you the contract that

1 Tarek had for his employment?

2 A. Not that I can recall.

3 Q. It's fair to say that Osama bin Laden hated the leaders of  
4 Saudi Arabia, didn't he?

5 A. The royal family, that's correct, yes.

6 Q. The royal family that runs Saudi Arabia, correct?

7 A. That's correct, yes.

8 Q. Osama bin Laden was quoted as saying that he hated Saudi  
9 Arabia more than he hated Israel and the United States?

02:58 10 A. Referring to the Saudi royal family, yeah, that's correct.

11 Q. He considered them to be apostate, correct?

12 A. The royal family, yes, that's correct.

13 Q. And what does the word "apostate" mean?

14 A. It means roughly heretic. Someone who's a deviant from  
15 the faith.

16 Q. For a person like Osama bin Laden, it was the worse thing  
17 he could say about anybody?

18 A. About the Saudi royal family, he said it repeatedly, yes,  
19 that's correct.

02:58 20 Q. I apologize. I didn't catch what you were saying.

21 A. I said, as far as the Saudi royal family, yes, he disliked  
22 them, and he repeatedly emphasized that, yes.

23 Q. And repeatedly called them apostates or heretics or  
24 traitors to the Muslim religion?

25 A. That's true.

1 Q. Going there to Saudi Arabia to work, to live, to marry, to  
2 raise a family, would be the last thing that a dedicated  
3 follower of Osama bin Laden would ever do?

4 MR. CHAKRAVARTY: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. Are you aware that that's what Tarek Mehanna was doing on  
7 the day he was arrested?

8 MR. CHAKRAVARTY: Objection, your Honor.

9 THE COURT: Sustained.

02:59 10 Q. Thank you, Mr. Kohlmann.

11 MR. CARNEY: That's all I have, your Honor.

12 THE WITNESS: Thank you.

13 THE COURT: Redirect?

14 MR. CHAKRAVARTY: I do, your Honor.

15 REDIRECT EXAMINATION BY MR. CHAKRAVARTY:

16 Q. Mr. Kohlmann, I apologize for making you miss your  
17 congressional testimony.

18 A. That's no problem. Thank you.

19 Q. You were asked some questions -- and I won't ask nearly as  
03:00 20 many -- about classified information and the fact that you  
21 don't use it. Why don't you use classified information?

22 A. For a variety of reasons, among which, No. 1, it's very  
23 difficult to tell with classified information what the original  
24 source is, where it's coming from, whether or not that source  
25 is reliable. Many times, classified sources are human sources

1 which are -- invariably can be unreliable especially when not  
2 -- there's no context in terms of who this person is or where  
3 they're coming from or how they know this information.

4 The second reason is because of the fact that I work with  
5 government analysts on a frequent basis who have security  
6 classifications. And they have repeatedly told me that  
7 classified information does not necessarily provide anyone any  
8 great advantage in studying the groups that I study beyond open  
9 source materials because many of the most important details are  
03:01 10 contained in open source documents.

11 Q. You were asked about what you have reviewed that the  
12 government has given you, whether it be in this case or in  
13 other cases. What types of information have you reviewed that  
14 the government has given you to review?

15 A. In this case?

16 Q. Both in this case as well as in other cases generally.

17 A. Sure. In this case, I was given a copy of the preserved  
18 hard drive from the Federal Bureau of Investigation. In other  
19 cases, occasionally -- well, I'm frequently given copies of  
03:01 20 hard drives. Occasionally, I'm also provided with FBI 302  
21 documents, other evidentiary materials that are seized. But  
22 most of the time it revolves around computer evidence.

23 Q. So in addition to your online kind of investigations, do  
24 you also review the stored data that the government gives you?

25 A. Yes, yes, yes, of course. Occasionally, I'm not given a



1 preserved copy of the hard drive. I'm simply given individual  
2 documents that have been recovered, either paper, physical or  
3 virtual. And I'm asked to opine on the significance of those  
4 documents.

5 Q. You were asked some questions about -- before we leave  
6 kind of what you've reviewed, that's not the sum total of what  
7 you review before you form your opinions?

8 A. No, no, no. In order to form my opinions, I take those  
9 materials, and I compare and contrast them with other cases in  
03:02 10 which I've been involved, other evidence that I've reviewed,  
11 other evidence that's in my archive from having studied the  
12 activity of al Qaeda and its affiliates. And, again, I do a  
13 compare and contrast analysis looking at all those different  
14 sources and coming together with: Why is this significant? Is  
15 it significant? How is it significant? And that's my report.

16 Q. You were asked about press reports. In what circumstances  
17 is media reporting helpful to you?

18 A. Media reporting is only helpful in a limited context. I  
19 only use it as such. Generally speaking, news articles are  
03:03 20 only helpful to provide context. In other words, if somebody  
21 is arrested in a foreign country and that's simply a fact, I  
22 will use a newspaper article to refer to that because that is  
23 an objective fact. Somebody has been arrested. If there's an  
24 -- if I'm trying to prove that something is publicly known, I  
25 might quote a New York Times article or a Houston Chronicle

1 article which indicates that certain facts are not secret.  
2 They're publicly known in the general public, in the media, and  
3 to everyone regardless of whether or not you have a degree in  
4 terrorism studies.

5 But that's the only context in which I use them. I would  
6 never use them to try to substantiate what al Qaeda is doing,  
7 what other Jihadi movements are doing. They're merely there  
8 for context.

9 Q. You were asked in the -- about your expert report that you  
03:04 10 drafted for purposes of this case. And you were asked about  
11 whether certain portions of that report were "cut and paste"  
12 into this report. In what circumstances did you copy  
13 information from previous reports into the report that you did  
14 for this case?

15 A. It happens that in criminal cases, very frequently, the  
16 evidence in these types of criminal cases is very similar.  
17 Sometimes it's the same. In a case where I have multiple  
18 pieces of evidence that are absolutely identical from material  
19 that I've reviewed in other cases, then obviously my assessment  
03:04 20 of that material would be identical. It would be the same. If  
21 it was different, that would be problematic. So where -- while  
22 I certainly tailor my analysis of those documents vis-à-vis a  
23 particular case to the facts of that case, if certain documents  
24 repeatedly surface in cases that I work on, the same documents  
25 over and over again, yeah, I mean, I would repeat exactly what

1 I had said before about that same document, that same video,  
2 because it is, in fact, the same product, and it has the same  
3 significance.

4 Q. You were asked several questions about peer-review. Can  
5 you explain, in your words, what you do that is peer-reviewed,  
6 either in an informal or in a formal way?

7 A. Well, formally, I submit magazines -- I submit journal  
8 articles. For instance, the last thing that I published was  
9 through African Security, which is a peer-reviewed publication.  
03:05 10 The piece I submitted was on the Shabaab movement in Somalia,  
11 S-h-a-b-a-a-b. It was cowritten with two other authors. We  
12 submitted the initial draft to the Journal. The Journal then  
13 gave it to several other experts in the field who reviewed it,  
14 who came back to us with comments, who came back to us with  
15 suggestions, criticisms.

16 Then we took those suggestions and criticisms and  
17 formulated a new draft, and then that was resubmitted and that  
18 was re-reviewed. We got a second round of comments back, a  
19 second round of critiques. Then we edited it once again and  
03:06 20 then we resubmitted it, and eventually it was accepted for  
21 publication.

22 Informal peer-review -- again, there are lots of  
23 publications that deal with terrorism that don't necessarily  
24 have a formal peer-review process. But I like to make sure  
25 that anything that I'm publishing, regardless of whether it's

1 in a formally peer-reviewed journal or not, I want to make sure  
2 it's accurate, and I want to make sure that I'm not saying  
3 anything that experts in my field would violently disagree  
4 with.

5 So in order to do that, No. 1, I present my findings at  
6 conferences in front of other experts, and I solicit their  
7 opinions and their reactions and their critiques. When I  
8 finally do write something out of the stuff that I've been  
9 presenting at conferences, I then take that material, and I  
03:06 10 send it around to a list of other individuals who are engaged  
11 in similar research or similar topics. People that I know,  
12 know about a particular area that I'm writing about because one  
13 of the problems with formal peer-review is that sometimes these  
14 materials are submitted to people who might know generally  
15 about a subject. They might know generally about terrorism,  
16 but they don't know enough specific information to offer me  
17 real feedback about an area like Jihadi social networking on  
18 the web or a particular al Qaeda faction in a particular  
19 region. So, you know, the problem with that is you really want  
03:07 20 to get people's opinions who know about those specific areas  
21 because just general reaction is not necessarily very helpful.

22 Q. So specifically with regards to al Qaeda and other  
23 terrorist groups' use of the internet and social networking  
24 forums, approximately how many, in your terms, people are there  
25 who have particularly developed an expertise in that realm?

1 A. There's approximately between 10 and 15 between Southeast  
2 Asia, European, and the United States. It's a fairly small  
3 community of people because most of the people involved in this  
4 are fairly young because it requires some degree of computer  
5 savvy and internet savvy.

6 We often see each other at conferences. We often speak  
7 alongside of each other. And because it's such a small group  
8 of people, invariably you have to share those ideas with them.  
9 You have to talk about this stuff. That's the only way you're  
03:08 10 going to learn anything. So, yeah, for instance, the testimony  
11 that I was supposed to give today down on Capitol Hill --

12 MR. CARNEY: I object, your Honor.

13 THE COURT: Well, if it's responsive -- I don't know  
14 whether it is until I hear it.

15 MR. CARNEY: It can't possibly be responsive to the  
16 question.

17 THE COURT: Overruled. Go ahead.

18 A. The other individuals who were -- are going to be  
19 testifying alongside of me, I know all those individuals. I  
03:08 20 talk to them on a regular basis. We share ideas. For that  
21 matter, if I ever post something or publish something that they  
22 disagree with or they have an argument with or they want to ask  
23 me about, I mean, I immediately get phone calls and emails.

24 Q. You were asked about your undercover activities.

25 A. Right.

1 Q. First, what did you mean when you described some of the  
2 things that you have done as "undercover"?

3 A. Sure. What I meant by that is that, again, I approached  
4 individuals who were radical extremists, who were in favor of  
5 physical violence. I approached them as an individual who  
6 might be sympathetic to their views or at least open to hearing  
7 about their views. And I did not disclose the fact that I was  
8 a terrorism researcher. I simply disclosed the fact that I had  
9 -- I was a student of Islam. And I engaged in various  
03:09 10 activities under that guise.

11 Q. Is that -- you described, I think, one episode about  
12 filming. Have you assumed that type of a role online as well?

13 A. Online, offline. I mean, online, I have repeatedly used  
14 pseudonyms. Online, I've repeatedly used false identities.  
15 I've repeatedly sent information over the internet to  
16 individuals who are violent extremists posing as someone other  
17 than myself. In real life, I've done the same thing. In the  
18 United Kingdom, I went over and I infiltrated a group of  
19 extremists, and I hung out with them for several weeks. And I  
03:10 20 observed their activities, and they asked me to join them and I  
21 declined.

22 But that's what I was referring to when -- again, it's a  
23 rough word, but it's a vernacular word. But "undercover" is a  
24 rough approximation for what I was describing there.

25 Q. You were asked questions about your abilities to read and

1 translate in Arabic. I think you've explained that a little  
2 bit. But how do you kind of -- as part of your investigative  
3 process, how do you translate material?

4 A. It was my assessment that learning Arabic would -- at  
5 least in a formalized process, would not provide me with enough  
6 expertise to be able to judge original language documents  
7 written by native speakers. So in order to do that, I felt it  
8 was simply more efficient and a better approach to actually  
9 have native speakers working with me who, again, are from the  
03:11 10 Middle East, who are from these countries, and who would not  
11 only be able to translate but would be able to understand the  
12 context, the religious terminology, and other aspects because  
13 very frequently this material -- Arabic is a very poetic  
14 language. And, oftentimes, this stuff is written in a poetic  
15 way where, even if you're able to literally translate, you may  
16 not get the full meaning of what's going on, of what's being  
17 said.

18 So -- and the other problem is that Arabic is only one  
19 language that we deal with. We deal with Arabic; Urdu; Pashto;  
03:11 20 Dari; very rarely, but I guess occasionally, Kurdish; Somalia.  
21 I guess the point being here is that I couldn't possibly learn  
22 all those languages myself and still do research, not in a way  
23 that I would be able to learn them efficiently enough to be  
24 able to translate documents.

25 It's much more efficient for us to simply have people who

1 are analysts at our company who are native speakers of those  
2 languages. And so in New York, we have native speakers -- we  
3 have multiple native speakers of Arabic, Urdu, Pashto. In  
4 Pakistan, we have native speakers of Urdu, Pashto, Dari.  
5 Pretty much every language in that region, we have people that  
6 speak it.

7 Q. Do you pay these translators?

8 A. We have to, yes.

9 Q. In addition to the native-language translators, do you  
03:12 10 have any automated tools to assist?

11 A. Yes. I should add that. As well as that, in order to  
12 browse internet websites that are written in foreign languages,  
13 there are a number of publicly available translation tools, one  
14 of which is Google Translate. These are obviously not perfect,  
15 far from it. But they do allow us to engage in what we call  
16 triage. We're able to look quickly at documents and be able to  
17 see: Is this document significant? Is there something in here  
18 worthy of translation?

19 If we come across documents using automated translation  
03:13 20 tools that appear to have significant information, we  
21 immediately draw those documents to the attention of our  
22 translators, of our analysts, who speak the native language,  
23 whatever document it's in. They create a translation. We go  
24 through it. We make sure it's accurate. And then -- you know,  
25 we then use it in our research, our analysis.



1 Q. You were asked several questions about how much money you  
2 make, and I think your testimony was it's approximately  
3 \$520,000 by the -- by federal prosecutors between the years  
4 2006 through 2010. Is that about right?

5 A. I think 2011 was my figure, but, yeah, that figure was all  
6 the way up until -- it was calculated all the way up until two  
7 weeks ago.

8 Q. So over the last five years, you've been making roughly  
9 105 grand from your work with the Department of Justice?

03:14 10 A. That's correct, yes.

11 Q. A year, I should say.

12 A. A year, that's correct, yes.

13 Q. And from that money -- that's gross, correct?

14 A. That's gross, yes.

15 Q. From that you then pay translators; you pay your overhead?

16 A. I have to pay rent for my office, I have to pay for  
17 translators. I have to pay for computer equipment. I have to  
18 pay for internet. I have to pay for software. There's a lot  
19 of expense. Even for a business that deals with internet  
03:14 20 technology, there are a lot of expenses. They're not cheap.

21 Q. Where is your company based?

22 A. Our company is based in New York City, in Manhattan.

23 Q. Is that where you live?

24 A. It is, yes.

25 Q. That's not cheap either.

1           Let's get to the kind of substance of what you testified  
2           to and what Mr. Carney asked you about. He asked you whether  
3           you have a way of knowing -- roughly, about whether you have a  
4           way of knowing whether people are telling you the truth when  
5           they're online on these social network forums as to whether  
6           they're actually going to the battlefield, so to speak. And  
7           you started to say that there are ways that you can verify  
8           this.

9           A. There are.

03:15 10          Q. How do you verify some of the information that you obtain  
11          on the internet?

12          A. One of the first things we do is we look to Internet  
13          Protocol addresses. These are the origin points. It's kind of  
14          like your phone number on the internet. If you know about  
15          Internet Protocol addresses, it's pretty easy to figure out  
16          where somebody is located because they actually tell you  
17          exactly the geographic region in which someone is located.

18                 If we contact someone who we believe is an armed fighter,  
19                 somebody who's physically on the battlefield or is talking  
03:15 20          about being on the battlefield, one of the first thing we look  
21          to is their IP address. Where is that IP address coming from?  
22          If we see an IP address repeatedly popping up in Waziristan, on  
23          the Afghan-Pakistani border, the chances are extremely high  
24          that that person is telling the truth because that region is a  
25          no-go region for outsiders.

1           The same thing is, if we contact someone -- and we have  
2           done this -- from AQAP, from al Qa'ida in Yemen, and we get a  
3           response back, we look at the IP address. Once again, in that  
4           case, we got an IP address in Yemen. The next thing we do is  
5           we start trying to parse together the personal details of these  
6           individuals.

7           What frequently happens is that these individuals end up  
8           being killed or captured. And it's pretty clear at that point  
9           whether or not someone was telling the truth. Out of  
03:16 10          approximately 120 people who we have identified online as being  
11          armed violent extremists on the battlefield, over half, 65 of  
12          them, have been killed, have been killed either building bombs,  
13          have been killed in missile strikes, have been killed in gun  
14          battles with law enforcement. But it's a pretty objective  
15          thing at that point that that was the person and they're  
16          deceased.

17          Q.    You were asked about which of these social network forums  
18          you didn't have access to, and you mentioned Ansar  
19          Al-Mujahideen and Tibyan Publications. I should say which you  
03:17 20          didn't have a password to.

21          A.    I didn't have a log-in and password to, that's correct.

22          Q.    What access did you have to these sites?

23          A.    Well, I had access to material provided to me secondhand.

24          At-Tibyan material was being posted all over the place.

25          Material from the at-Tibyan forum was being reposted on the

1 Muntada Al Ansar forum, which I did have access to. And since  
2 that time, I've been provided with multiple documents which  
3 have been recovered from the at-Tibyan website, provided to me  
4 by law enforcement both in the United Kingdom, Scotland, and  
5 the United States, and West Yorkshire Police.

6 Q. You were asked about the Nine/Eleven Finding Answers  
7 website. That's a nonprofit organization that you're involved  
8 in?

9 A. That's correct, yes.

03:18 10 Q. With regards to the Jihad video clips that are on that  
11 website, or have been as long as you've been aware of it, what  
12 is the purpose of putting those on the internet?

13 A. The purpose is to communicate to the general public, to  
14 academics, to policymakers, to law enforcement, to give them a  
15 taste of what's going on in the world of al Qa'ida and violent  
16 extremists. We don't -- we only publish -- or I think NEFA has  
17 only published a handful of these excerpts specifically because  
18 of the fact that we don't want to provide any benefit to anyone  
19 aside from academics, policymakers, law enforcement, that kind  
03:19 20 of crowd. But that being said, I wouldn't encourage anyone  
21 else to visit the website because we do log IP addresses, and  
22 we carefully monitor everyone who's visiting our website.

23 Q. Do you have banners indicating -- or are there banners on  
24 the NEFA website that indicate what the purpose is for the  
25 publication of the --

1 A. Yeah. It's pretty much broadcast loud and clear. NEFA is  
2 known among Jihadists. It's not well-liked.

3 Q. In fact, on your direct testimony, I think, on Friday, we  
4 called up an exhibit that was from that website, correct?

5 A. That's correct, yes.

6 Q. The materials that you have provided to NEFA that have  
7 been put onto the website, how did you obtain them -- how did  
8 you obtain them, I guess?

9 A. Well, it depends. There was a recording placed on the  
03:19 10 website of a protest rally in London. I personally recorded  
11 that video. There was a video -- another video on there of a  
12 protest rally in New York from 2007 that I personally recorded.  
13 The other materials, generally speaking, were either obtained  
14 from sources on the ground in Pakistan or they were obtained  
15 from al Qa'ida's internet websites.

16 Q. Was the purpose of NEFA's posting related to trying to  
17 help al Qa'ida?

18 A. No, I don't think you could say that.

19 Q. What's NEFA's mission?

03:20 20 A. NEFA's mission is try to prevent future acts of terrorism  
21 and try to educate the public at large, academics, policymakers  
22 law enforcement, and others about the threat of terrorism.  
23 Again, I mean, the clips that were on there, there's only a  
24 handful of clips, we were very careful not to give too much  
25 video on the website because we didn't want to serve as a

1     mouthpiece for al Qa'ida.

2     Q.     You were asked about the -- what you saw on the computer  
3     hard drive that the government gave you with regards to  
4     Al-Ekhlaas and Al-Hesbah websites. These are two of the  
5     websites that you described earlier as being associated with al  
6     Qa'ida, correct?

7     A.     That's correct, yes.

8             MR. CHAKRAVARTY: Can we call up Exhibit 503, please?

9     Q.     So in this conversation, does Abu Mundhir say, "Still got  
03:21 10     access to Ekhlaas?" The defendant says, "With the password you  
11     gave me?" Abu Mundhir says, "Yeah." The defendant says, "Ya."  
12     Then a link is sent. And then Abu Mundhir says, "Check it out.  
13     It's on Al-Hesbah also." Then the defendant says, "Damn  
14     straight." Is Al-Ekhlaas the website that you had previously  
15     mentioned?

16     A.     Yes. I had omitted this. This is a reference that I had  
17     come across in a chat on the computer, and it's definitely to a  
18     link to Al-Ekhlaas, the forum.

19     Q.     The reference after that is to Al-Hesbah. Is that the  
03:22 20     website you were referring to?

21     A.     That is al Qa'ida's other main forum for this time period,  
22     that's correct.

23             MR. CHAKRAVARTY: Can we go to Exhibit 502 very  
24     quickly?

25     Q.     Are these those two websites again?

1 A. Yes, that's correct. Al-Hesbah, alhesbah.org and  
2 alekhlaas.net. At the time, these were al Qa'ida's preeminent  
3 social networking forums.

4 MR. CHAKRAVARTY: Thanks, Paul.

5 Q. Finally, I want to talk about some of the questions Mr.  
6 Carney asked you about Yemen. You're not aware of any of the  
7 witness statements in this case, is that right?

8 A. Aside from my own, I don't believe so.

9 Q. The government only provided you with the hard drive and  
03:23 10 some additional posts?

11 A. That's correct, yes.

12 Q. When you described what you knew when you answered my  
13 questions about Yemen, they weren't based on any awareness that  
14 you have with regards to the significance of Yemen in this  
15 case, is that right?

16 A. I don't believe so, no.

17 Q. So after 9/11, I think you testified on cross-examination  
18 that the government of Yemen, the president, the then president  
19 of Yemen, came to the United States and said they would  
03:24 20 cooperate with the hunt to find al Qa'ida, is that right?

21 A. That's correct, yes.

22 Q. And do you know if that, in fact, happened?

23 A. Well, they tried.

24 Q. What was the -- what transpired as they were trying?

25 A. They attempted to crack down on al Qa'ida, but al Qa'ida

1 continued to launch terrorist attacks. In October of 2002,  
2 approximately 13 months after 9/11, an al Qa'ida suicide bomb  
3 team that had been trained and recruited inside of Yemen less  
4 than six months before, carried out a suicide bomb attack  
5 targeting a French supertanker off the coast of Aden in Yemen.

6 Two months later, in December of 2002, a Yemeni politician  
7 was assassinated; and shortly thereafter, a group of American  
8 Baptists, I guess, missionaries, inside of a hospital in Jibla,  
9 were massacred by individuals claiming to be from al Qa'ida and  
03:25 10 later determined to be al Qa'ida associates.

11 As far as I understand it, at least throughout this  
12 period, there were al Qa'ida training camps, al Qa'ida  
13 activity, al Qa'ida operations, attacks, taking place in Yemen.

14 Q. At some point, there were -- I think you testified on  
15 cross, there was a series of arrests of several people?

16 A. There were, yes. There was -- first of all, there was the  
17 killing of Abu al-Harithi, H-a-r-i-t-h-i, who was, roughly  
18 speaking, the commander of al Qa'ida in Yemen, although it was  
19 not official. There were arrests of other individuals, Abu  
03:25 20 Basir al-Wahishi, A-b-u, B-a-s-i-r, a-l, W-a-h-i-s-h-i, Qasim  
21 al-Rimi, Q-a-s-i-m, a-l, R-i-m-i, and others.

22 Q. But there was a much publicized prison break, I think, as  
23 Mr. Carney described?

24 A. That's correct. These same individuals then, both Mr.  
25 al-Rimi and Mr. Al-Wahishi, were able to escape from prison,



1 that's correct.

2 Q. That was in 2006?

3 A. Approximately, yes.

4 Q. How would you describe al Qa'ida's presence in Yemen  
5 during those time frames?

6 A. It was less than it had been before largely because of the  
7 fact that many Yemenis operatives were being drawn out to go  
8 fight in Saudi Arabia and in Iraq. However, Yemen remained a  
9 important area for al Qa'ida because of the fact that it was  
03:26 10 one of the few places, other than Iraq, where Saudi al Qa'ida  
11 members could organize in secret. Saudi Arabia is a police  
12 state. So it was very difficult for Saudi al Qa'ida cells to  
13 organize themselves or to get weapons inside of Saudi Arabia.

14 However, that kind of lack of oversight and an abundance  
15 of weapons was very easily found across the border in Yemen.  
16 So throughout this time, throughout the period of activity in  
17 Saudi Arabia and in Iraq, you had recruits, money, weapons, and  
18 other forms of support headed from Yemen to Saudi Arabia, Iraq,  
19 Afghanistan, et cetera.

03:27 20 MR. CHAKRAVARTY: That's all I have, your Honor.

21 MR. CARNEY: May we approach, please?

22 (SIDEBAR CONFERENCE AS FOLLOWS:

23 MR. CARNEY: Your Honor, I submit that on this  
24 redirect examination, the government has opened the door to  
25 allow me to play these videos. They asked questions of the

1 witness which the witness answered in the present tense, such  
2 as "we only put on a handful of clips on the website." "We  
3 don't want to be a mouthpiece for al Qa'ida." "We don't want  
4 to be helping al Qa'ida." All of this testimony was in the  
5 present tense. I want to present the videos that are currently  
6 on the website to show that it's not a handful. There are 37  
7 al Qa'ida videos.

8 And in terms of the documents, where they say, "We  
9 don't want to be the mouthpiece for al Qa'ida," there are 107  
03:28 10 documents exclusively related to al Qa'ida. Forty of them are  
11 by Osama bin Laden, translated documents. Thirty-three of them  
12 are Doctor al-Z. Thirty-four of them are other al Qa'ida  
13 members. And they'll see on the website there are other  
14 sections devoted to numerous other terrorist groups.

15 My point is that the fact that this witness and the  
16 prosecutor were talking about this in the present tense now  
17 allows me to show what the present looks like on this website.

18 MR. CHAKRAVARTY: It doesn't change what's probative  
19 to the issue in the case. I understand it's being offered to  
03:29 20 impeach the witness, then he can ask the question of parole  
21 evidence to try to further impeach him on that. On such a  
22 peripheral matter, it doesn't seem to make sense. To ask the  
23 question: Do you know whether there are 107 videos on the  
24 website as it appears today seems to be impeaching this  
25 witness? But it doesn't advance the ball at all. I don't

1 think I opened the door. In fact, I quibble with whether he  
2 said -- and how I was asking the questions. Whether he was  
3 saying, as of today, this is what is on there. I think he's  
4 already established his basis of knowledge of the website. It  
5 was not months ago, No. 1. And, No. 2, he was asked about a  
6 range of time, not about specifically, right now, this is what  
7 is on the website.

8 MR. CARNEY: If I may respond? It's got nothing to do  
9 with parole evidence. In 33 years, I've never had an instance  
03:30 10 where parole evidence has ever been relevant.

11 What this involves is the questioning of the witness  
12 was in the present tense. We don't want this to be on our  
13 website. The prosecutor concedes that I can ask him about it.  
14 That concession may be the way he would want to do it, but I  
15 want to be able to show the jury so they can see with their own  
16 eyes what they're talking about.

17 If it wasn't important, he shouldn't have brought it  
18 up in redirect. If he wanted to limit it to 2005 or 2006, he  
19 should have talked about it back then. But I was very careful  
03:30 20 to watch the tense. The exact quotes are, "We don't want to  
21 be" -- "We don't want to be a mouthpiece," and "There are only  
22 a handful." I want to show the jury that's not true. He's  
23 opened the door now. He never should have gone near there, but  
24 he did, and he's created a complete misimpression for this  
25 jury.

1 THE COURT: I think a general description of the  
2 website has already been elicited by both sides. I don't think  
3 the use of the present tense makes specific exhibits admissible  
4 without a connection to the relevant time period. So you can  
5 -- I agree, basically, that you can question about the numbers  
6 and so on, but I don't think it's a basis for providing that  
7 Clip A should be admitted without some connection to the events  
8 of the case.

9 MR. CARNEY: This is the connection, your Honor. Clip  
03:31 10 A is Osama bin Laden speaking. It will directly impeach this  
11 witness that they're not acting as a mouthpiece for al Qa'ida.  
12 They're saying, We don't want -- We don't want this site to be  
13 a mouthpiece. That's what they're contending. I'm going to  
14 show he's not accurate. He's not accurate and he's not  
15 truthful.

16 THE COURT: Well, he --

17 MR. CARNEY: You don't --

18 THE COURT: You can get it by questioning without the  
19 exhibits.

03:32 20 MR. CARNEY: Your Honor, you've let in so many videos  
21 over and over and over. And I want to show that the same  
22 videos are available and that they are acting as the mouthpiece  
23 for al Qa'ida. The only way the jury can make this  
24 determination is if they see it.

25 I've indicated there are 37 on the website. I am

1 offering four. Three of them are less than two minutes. One  
2 of them is less than four minutes. I want to offer five  
3 documents, not to read them but just to show who they are by  
4 and what the subject is. It's going to take a very brief  
5 amount of time, but it will convey the point to the jury that  
6 what was said on redirect simply isn't true. He opened it.

7 MR. CHAKRAVARTY: That's a very different issue.

8 MR. CARNEY: He opened it, and this evidence will  
9 directly impeach this witness and show his bias. Without  
03:33 10 showing it, the bias doesn't come through.

11 THE COURT: With respect to documents, if you have  
12 five documents, you can show them to him and see if he can tell  
13 you whether they were there in earlier iterations or they're  
14 recent additions. Depending on the answer, that might affect  
15 those. I don't know whether he can do the same thing with  
16 videos.

17 MR. CHAKRAVARTY: Videos have a post date. And from  
18 the ones that -- my memory is that they were -- they appear to  
19 be posted 2009, but I saw them for all of two, three minutes.  
03:33 20 So I don't know for sure.

21 MR. CARNEY: If I can show that these were posted in  
22 2006 by those tags, then would that make a difference to your  
23 Honor?

24 THE COURT: If there's reliable evidence that they  
25 were contemporaneous with the time of the events of the trial,

1 that's -- that -- at least that overcomes the prior ruling.

2 MR. CARNEY: All right. May I have -- I'll just need  
3 one minute to look at them. I've got them all listed .

4 MR. CHAKRAVARTY: I think that's consistent with what  
5 your ruling is, but that's not the impeachment issue. That is  
6 back to they're offering it as probative evidence of a fact  
7 that makes it something --

8 THE COURT: Might be both.

9 MR. CARNEY: I'm offering it for both.

03:34 10 MR. CHAKRAVARTY: We still have the 403 objection, but  
11 let's see what it says.

12 . . . END OF SIDEBAR CONFERENCE.)

13 MR. CARNEY: I'll need a minute if I could, please,  
14 your Honor.

15 Sorry for the delay.

16 Should I come back?

17 THE COURT: Okay.

18 MR. CARNEY: I should have said -- I'm sorry. May I  
19 approach the sidebar?

03:40 20 THE COURT: Yes.

21 (SIDEBAR CONFERENCE AS FOLLOWS:

22 MR. CARNEY: We have 33 videos that predate this  
23 Indictment, are either from 2009, 2008 or 2007. There are 25  
24 documents in 2009; 28 from 2008; seven from 2007; one from  
25 2004; and 25 predate 2001, are 2001 or predate it.

1 THE COURT: Predate 2001?

2 MR. CARNEY: Yes.

3 MR. CHAKRAVARTY: The website --

4 THE COURT: The website didn't exist.

5 MR. CARNEY: Well, the date of the video, which was  
6 conveyed as the --

7 THE COURT: There are dates and there are dates.

8 There are dates of the video and dates of the posting on this  
9 website.

03:41 10 MR. CARNEY: Well, I don't know.

11 THE COURT: The date would be when it was available on  
12 the website. That's what you're going to show. If you can't  
13 show that, perhaps even because of the ambiguity of whatever  
14 the date is, then we haven't changed. You can still question  
15 him about seeing this. It's just a question of using the  
16 video.

17 MR. CARNEY: Can I --

18 THE COURT: You still have a chance in your own case.  
19 It's not over forever necessarily. I don't say it's admissible  
03:41 20 now for that. We'll deal with that. This isn't your only  
21 chance to get these things in.

22 MR. CARNEY: Can I show him what the website looks  
23 like so that you can see there are videos on there without  
24 playing them or documents on it without reading them?

25 THE COURT: Depends on the foundation. If the witness

1 says it looks substantially the same today as it did in 2005,  
2 2006, 2007.

3 MR. CARNEY: 8, 9. My client was arrested --

4 THE COURT: But the acts he is accused of are in the  
5 2005, 2006 era.

6 MR. CARNEY: I believe the Indictment goes beyond  
7 that.

8 THE COURT: It may, but the evidence doesn't.

9 MR. CARNEY: No, but the Indictment -- well, what I'm  
03:42 10 trying to show is things that were available during the  
11 pendency --

12 THE COURT: 7 may be on the margin. 8, 9, I don't  
13 think are.

14 MR. CARNEY: He wasn't arrested on these current  
15 charges, except for false statement, until November of 2009.  
16 We tend --

17 THE COURT: What is it you want to do? You want him  
18 to say this is the general format of the website?

19 MR. CARNEY: Yeah.

03:42 20 THE COURT: And there were some things --

21 MR. CARNEY: Illustrative --

22 THE COURT: -- although he can't say exactly what they  
23 were.

24 MR. CARNEY: Yes, exactly.

25 MR. CHAKRAVARTY: And any details about --



1 THE COURT: You can't say which ones there were.  
2 There was a video, and it can be linked. I don't know what it  
3 was or whatever.

4 MR. CARNEY: Okay. I'll -- fine.

5 . . . END OF SIDEBAR CONFERENCE.)

6 MR. CARNEY: All set, your Honor?

7 THE COURT: Yes.

8 MR. CARNEY: Thank you.

9 RECROSS-EXAMINATION BY MR. CARNEY:

03:43 10 Q. Good afternoon again, Mr. Kohlmann.

11 A. Good afternoon.

12 Q. Now, the website for NEFA has stayed pretty consistent  
13 over the years in terms of its general format --

14 A. No.

15 Q. -- is that true?

16 A. They hired a company to redo the website about three years  
17 ago.

18 Q. Okay. That would have been around 2008?

19 A. No. It would have been around --

03:43 20 Q. If this is --

21 A. It would have been -- yeah. It was around -- I wasn't  
22 involved in this decision-making. I wasn't involved in any of  
23 this. I think it was around November or December of 2008,  
24 maybe January 2009. I don't really recall.

25 Q. Okay. Now, the website has a bunch of links on it, does

1 it not?

2 A. Yeah. But, I mean, that would be any website.

3 Q. If one were to look at the website, you'd see on the right  
4 side propaganda videos, right?

5 A. I honestly -- I haven't looked at the website in a long  
6 time. It was redone by a company that I'm not involved with.

7 Q. Have you looked at it within calendar year 2011?

8 A. No.

9 Q. 2010?

03:44 10 A. Maybe. I don't remember.

11 MR. CARNEY: Could we present the website, please?

12 Q. See if it will refresh your memory of when you looked at  
13 it.

14 THE COURT: This is only for the witness right now.

15 MR. CARNEY: Okay.

16 Q. Is that the NEFA website?

17 A. I believe it is, yes.

18 MR. CARNEY: Could you scroll down a little bit,  
19 please? Okay.

03:44 20 Q. On the right side, there are photos underneath headings  
21 that say, "Propaganda Videos," is that right?

22 A. That's correct, there are.

23 Q. In the center, there are "Featured Documents" and "NEFA  
24 Headlines"?

25 A. That's correct, yes.

1 Q. And then on the left side of the website, they have  
2 "Departments" and "Multimedia"?

3 A. That's correct, yes.

4 Q. Is this pretty much the set-up as the revised website  
5 looked when you last saw it?

6 A. I don't think so.

7 Q. When you saw the website, did it have links to videos on  
8 it?

9 A. It had a link to a multimedia section --

03:45 10 Q. All right.

11 A. -- where there was --

12 Q. A multimedia section has as its first category "Propaganda  
13 Videos"?

14 A. That's correct.

15 Q. And under the "Departments," it has "Featured Documents"?

16 A. That's correct, yes.

17 Q. Now, when I was questioning you earlier, you were talking  
18 about a number of the documents that you had discovered, and  
19 you had them posted on this website, correct?

03:45 20 A. I had contributed documents for this website, that's  
21 correct, yes.

22 Q. And the way -- where they would appear is under the  
23 category "Featured Documents," is that correct?

24 A. They were under "Featured Documents" and also "Special  
25 Reports."

1 Q. And any videos that you would provide, that you  
2 authenticated, would go under "Propaganda Videos," correct?

3 A. No. They were -- they were under "Multimedia," but they  
4 weren't exclusively under that section. There's, I believe,  
5 two -- I contributed two videos to the category that's  
6 underneath that says, "Exclusive Interview Videos." I don't  
7 know what else is underneath. But it was, again, the stuff --  
8 I contributed a variety of different items. So it's -- it's  
9 under, I think, all those categories.

03:46 10 Q. Now, in response to questions by the prosecutor, Mr.  
11 Chakravarty, you indicated that "We don't want to become a  
12 mouthpiece for al Qa'ida"?

13 A. That's correct.

14 Q. Did I quote you accurately?

15 A. That's accurate.

16 Q. And that "We don't want to put things on there that will  
17 assist al Qa'ida," correct?

18 A. I would agree, yes.

19 Q. Now, on this website currently, do you feel that the --  
03:47 20 your company, NEFA, is accomplishing those goals?

21 A. I don't believe we're assisting al Qa'ida, no.

22 MR. CARNEY: Your Honor, I would like to show the jury  
23 this website.

24 MR. CHAKRAVARTY: Objection, your Honor.

25 THE COURT: Sustained. On the foundation, sustained.

1 MR. CARNEY: Can we go to the "Featured Documents,"  
2 please? Could you hit "Translations, transcriptions of  
3 statements by al Qa'ida leadership," please? And can you  
4 scroll down slightly, please?

5 Q. Is this typical of the format that you recall that the  
6 documents that you posted would appear as?

7 A. Roughly. Again, I didn't -- I didn't post any of this  
8 stuff. So I don't -- it's similar to what I used to do, but  
9 it's not the same.

03:48 10 Q. Okay.

11 MR. CARNEY: Can you hit the first document that's  
12 entitled, "Doctor al-Zawahiri," please? And can you scroll  
13 down, please?

14 Q. Do you recognize this document as being a proclamation by  
15 him?

16 A. I believe it is.

17 Q. And is this similar to the format in which the documents  
18 you presented would be appearing on the website?

19 A. Roughly.

03:49 20 Q. And what that means is there's a brief introduction of the  
21 title of the document and who it's by?

22 MR. CARNEY: Could you scroll up so Mr. Kohlmann can  
23 see it, please?

24 Q. This indicates who the author is. This indicates the  
25 title of the document, the date it was released. It then

1 describes generally that the document is a transcript of a  
2 message obtained by NEFA investigators. The transcript is --  
3 on behalf of the NEFA Terror Watch subscription service?

4 MR. CHAKRAVARTY: Objection, your Honor. This --

5 Q. It just has the introductory language like that?

6 MR. CHAKRAVARTY: It appears he's just reading the  
7 content of the document.

8 THE COURT: He's identifying it but go ahead.

9 A. I'm sorry. Can you repeat the question?

03:49 10 Q. What appears here is the author of the document, the title  
11 of the document, the date released?

12 A. I believe so, yes.

13 Q. Then it has a little description of how the document was  
14 obtained?

15 A. That's correct.

16 Q. And then it contains the English wording of the document,  
17 an English translation of the document?

18 A. An excerpted translation, yes.

19 Q. And how many paragraphs does this appear to be?

03:50 20 MR. CARNEY: Can you scroll down, please, John?

21 A. Approximately 18 paragraphs.

22 Q. Same count as I have.

23 A. Okay.

24 Q. And it ends with the name of the author, in this instance,  
25 Doctor Shaykh Ayman al-Zawahiri. And it identifies it as al

1     Qa'ida media as well, does it not?

2     A.     Actually, it says As-Sahab Media.

3     Q.     Okay. And this is typical of the format that your  
4     documents were posted on?

5     A.     I mean, roughly, yeah. I believe this is a translation  
6     that comes from one of our analysts originally, but I don't  
7     know that to be sure.

8     Q.     What I'm focused on is: This is typical of the format?

9     A.     I mean, roughly speaking, yes. It's a pdf file with text  
03:51 10     with the thing on top, roughly speaking.

11           MR. CARNEY: Can you go back to the previous site,  
12     please?

13     Q.     Now, this -- again, we're back at the web page, right?

14     A.     That's correct, yes.

15     Q.     The home page?

16     A.     That's correct, yes.

17     Q.     And you said that NEFA does not want to be the mouthpiece  
18     for al Qa'ida?

19     A.     Correct.

03:51 20     Q.     All right. I want you to count how many translation,  
21     transcriptions, by al Qa'ida leadership there are on this  
22     website.

23           MR. CHAKRAVARTY: Objection, your Honor. The timing,  
24     the dates of these, are far afield from anything that the jury  
25     is going to be asked to decide.

1 THE COURT: Go ahead. You can have it.

2 Q. What we're going to do is we're going to scroll down here.

3 Do you have any paper up there, Mr. Kohlmann?

4 A. Not that I can write on, no. I don't have a writing  
5 implement either.

6 Q. Do you have a pen, sir?

7 A. No, I don't.

8 Q. I'd just like you to keep track of these as they go by and  
9 just note how many are by Doctor al-Z and how many are by Osama

03:53 10 bin Laden and how many are by someone else by al Qa'ida, okay?

11 A. Okay.

12 Q. This will be pretty fast.

13 MR. CARNEY: John, let me take over that if I could.

14 Q. And tell me if I'm going too fast.

15 MR. CHAKRAVARTY: Your Honor, could he also ask the  
16 dates since I won't have a chance to on redirect?

17 MR. CARNEY: The dates will take too long. I'm just  
18 looking for the authors, your Honor.

19 THE COURT: Let's do without them for now and see what  
03:53 20 needs to be added later.

21 Q. Ready, Mr. Kohlmann?

22 A. Yes. Go ahead.

23 Q. You've got the first two?

24 A. Yeah. You can keep going. One sec, one sec, sorry. Can  
25 you go up a page, please? Okay. Go down.



1 Q. Why don't you just say "go" and I'll go.

2 A. Okay. Keep going. Okay. Keep going. Okay. Keep going.

3 Okay. Keep going. Keep going. Keep going. Keep going. Keep

4 going. Keep going. Keep going. Keep going. I'm sorry. Can

5 you go up once? Okay. Go down. Keep going. Keep going.

6 Keep going. Keep going. Keep going. Keep going. Keep going.

7 I'm sorry. Did you cycle down? Did someone cycle down? Can

8 you go up a page? Sorry. Real quick. Okay. Keep going.

9 Keep going. Keep going. Keep going. Keep going. Keep going.

03:57 10 Keep going. Keep going. Keep going. Keep going. Keep going.

11 Keep going. Continue. Keep going. Keep going. Keep going.

12 Keep going. Keep going. Keep going. Keep going. Keep going.

13 Keep going. Keep going. Keep going. Keep going. Keep going.

14 Keep going. Keep going. Keep going. Keep going. Keep going.

15 Keep going. Keep going. Keep going. Keep going. Keep going.

16 Am I meant to count this one because there's no link on

17 here? The one that's in the middle, there's actually no link.

18 Q. You can skip it.

19 A. I can skip it, okay.

04:00 20 Okay. Keep going. Okay. Keep going. Okay. Keep going.

21 The document that's -- the two documents that are

22 referenced on the screen here, neither one of those are public

23 statements. They were letters recovered by the U.S.

24 Government.

25 Q. Okay.

1 A. Should I count them or no?

2 Q. Please. They're both by Osama bin Laden?

3 A. I can't verify -- they were released by the U.S. military.  
4 So I don't have any way of knowing that.

5 Q. Skip them.

6 A. Okay.

7 Q. We'll stop there.

8 A. Okay.

9 Q. Can we tally them, please?

04:01 10 A. Sure, of course. Okay.

11 Q. Mr. Kohlmann, how many translated statements are there by  
12 Osama bin Laden, please?

13 A. I counted 34.

14 Q. How many translated statements are there by Doctor  
15 al-Zawahiri?

16 A. Al-Zawahiri, I counted 36.

17 Q. And how many by other al Qa'ida leadership members or al  
18 Qa'ida representatives?

19 A. Including the Al-Fajr Media Center, correct, the  
04:02 20 logistical people behind al Qa'ida?

21 Q. Please.

22 A. I've got 33.

23 Q. How many does that total completely, all three categories?

24 A. 103.

25 Q. So that, on this website, someone going to it right now

1 could see 103 statements by al Qa'ida or its representatives?

2 A. Excerpted statements. Again, they're not -- they're  
3 edited, so --

4 Q. Edited down to as small as 18 paragraphs?

5 A. Some of these recordings can last for hours.

6 Q. Okay.

7 A. That could be a small portion of it. It could be a  
8 significant portion. These recordings tend to go on and on and  
9 on.

04:03 10 Q. And you also said that you don't want to be the mouthpiece  
11 for al Qa'ida?

12 A. That's correct.

13 MR. CARNEY: Can we go to the home page, please? All  
14 right. Can you go down to "Propaganda Videos"?

15 Q. All right. I just want you to count the videos.

16 A. Sure.

17 MR. CHAKRAVARTY: Your Honor, I object. The last  
18 "pretty fast" -- we're ten minutes beyond 1:00. We don't mind  
19 staying, obviously, to get rid of -- to finish with this  
04:04 20 witness.

21 MR. CARNEY: It will be pretty fast.

22 THE COURT: Scan through it quickly and let's see what  
23 --

24 Q. I'm just going to --

25 A. No problem.

1 Q. Okay. I'd say -- you know how to do it.

2 A. I can't. I'm sorry. I can't do it this fast.

3 Q. Ready?

4 A. Yeah.

5 Q. You don't have to write down anything.

6 A. I'm just doing a tally.

7 Q. Ready?

8 A. Uh-huh. Yup. Yup. Yup.

9 MR. CHAKRAVARTY: Your Honor, we would accept whatever  
04:05 10 representation defense makes about how many videos there are on  
11 this website right now.

12 MR. CARNEY: Well, I accept that.

13 THE COURT: What's the representation?

14 MR. CARNEY: Thirty-seven, your Honor.

15 Q. So there are 103?

16 A. I mean, approximately, yeah.

17 Q. And 37 excerpts from original al Qa'ida videos?

18 A. No.

19 Q. Are these al Qa'ida videos on here?

04:05 20 A. No, not all of them.

21 Q. Where are they from?

22 A. Some of the videos are original Pakistani Taliban videos  
23 that we got from sources inside of Pakistan. They're videos.  
24 They're journalist-style videos. They're Pakistani journalists  
25 who recorded something, and then we got a copy of it.

1 Q. Are most of them al Qaeda videos?

2 A. I don't know. I think about two-thirds of them are from  
3 official al Qaeda videos. The rest is, I believe, original  
4 content.

5 Q. I'll accept that.

6 MR. CARNEY: That's all I have, your Honor. Thank  
7 you.

8 THE COURT: Okay.

9 MR. CHAKRAVARTY: Your Honor, I don't want a  
04:06 10 misapprehension to the jury as to what these things are that  
11 they have not seen. I think the timing of when we're seeing  
12 this is, they've understood, right now. This website is on,  
13 and the witness -- but the period that these materials were  
14 published has been back from 1994 till today. It's like a  
15 compendium of al Qaeda material.

16 THE COURT: We'll leave it as it is.

17 MR. CHAKRAVARTY: No further questions, your Honor.

18 THE COURT: Thank you, Mr. Kohlmann.

19 THE WITNESS: Thank you, your Honor.

04:06 20 THE COURT: Jurors, I appreciate you staying over a  
21 little. We'll see you tomorrow at 9 and continue with the  
22 case.

23 (The jury was excused at 1:15 p.m.)

24 MR. CHAKRAVARTY: Yes, your Honor. Thank you for  
25 seeing us briefly. We do expect to rest first thing in the

1 morning tomorrow. Hopefully, if there's any issues with  
2 exhibits -- I think we've worked them out, but we'll deal with  
3 that on the record in the morning and then we'll rest.

4 And then we have listed defense experts. The first  
5 two experts who have been here for the last couple of days are  
6 Doctor Fadel and Doctor March. The government has both scope  
7 concerns with them as well as legitimate Daubert issues. All  
8 of them are couched within this -- the lens with respect to all  
9 of the experts for which we don't feel we've been given  
04:08 10 adequate discovery to prepare for what the -- for their  
11 testimony because all we have are these disclosures where they  
12 say generally the topics that they will talk about without  
13 citing to the basis of their opinion, without citing to any  
14 materials that we have that say that this is what I've looked  
15 at and this is how I've come to this conclusion and many of  
16 which bear directly on what the defendant's state of mind was  
17 and what his understandings of different things were.

18 Last evening, we received approximately 60 or 70  
19 exhibits that they intend to introduce now for the first time  
04:09 20 through these witnesses. We haven't even had the chance to  
21 both digest the authenticity of them -- some of them are not  
22 self-authenticating. The government is prepared to be very lax  
23 in terms of authenticating things that we've given to the  
24 defense, but it's not even evident that's what these materials  
25 are, let alone that these expert witnesses are the appropriate

1 witnesses to lay that foundation or in terms of how materials  
2 were extracted.

3           The concern is that if we don't do some kind of a  
4 hearing before they testify -- and we understand this may have  
5 to happen ad seriatim as the witnesses come in. But given the  
6 state of the disclosures about what they're expected to say --  
7 now that Mr. Kohlmann is off the stand, the Court knows what  
8 the scope of his testimony has been. So there's responsive  
9 testimony, which the government would allege at least three of  
04:09 10 the experts are prone to being excluded altogether, or at least  
11 we would urge that; and then others, including Doctor March and  
12 Doctor Fadel, to have their testimony sufficiently narrowed  
13 understanding that they're not necessarily responsive to Mr.  
14 Kohlmann but, rather, in terms of the germane aspects of their  
15 expertise and what's in their disclosures, that is also much  
16 narrower, should be much narrower, than they have given, and we  
17 should get much more of a basis for that opinion than we  
18 currently have.

19           THE COURT: The first anticipated witness is Doctor  
04:10 20 March, is that correct?

21           MR. CARNEY: March.

22           THE COURT: Okay. We'll deal with his issues in the  
23 morning of this nature. We'll have his testimony and finish.  
24 If we need to do that with Doctor Fadel, we can do that as  
25 well. Then we'll figure out how to approach all the others

1 after that. I think we do have to take it at this point one by  
2 one. We will take the time that's necessary to do it, and I  
3 don't know what that will be. We'll have the jury ready to  
4 proceed.

5 Let me just say that I -- let me say I read through  
6 the summary -- many of the summaries were prepared in response  
7 to the report, for example, of Mr. Kohlmann, and his testimony  
8 was in -- well, it was different, but that's not really the  
9 point. His testimony is what it is. There were things in the  
04:11 10 report that were not addressed in the testimony. I would  
11 agree, generally, that there's no need to rebut things that  
12 weren't said.

13 One of the large areas where there was nothing said  
14 was any opinions about the defendant. I would tend to think  
15 there will be a reciprocal rule with respect to the defense  
16 experts. So opinions about the defendant's subjective  
17 responses to things would generally be excluded, at least for  
18 the reason that they weren't -- it's not an issue raised by the  
19 prosecution expert. I don't know whether that's -- there's  
04:11 20 still an issue that needs to be resolved. I just mean to mark  
21 out some general territory.

22 MR. CARNEY: We accept that, your Honor.

23 THE COURT: As long as I'm just giving the general  
24 overview, some of the experts -- I'm not sure if it was the  
25 people who will be expected to testify. I do think Doctor



1 Sageman, for example, is one, and others, I think, talked about  
2 predicting future behavior. And I think that is all -- because  
3 there was no testimony as the report might have suggested there  
4 would have been about predictions, predictive testimony,  
5 generally does not --

6 MS. BASSIL: Your Honor, I'm prepared to revise the  
7 sort of description of Doctor Sageman, and I've told the  
8 prosecution that.

9 THE COURT: So those are some general areas. The one  
04:12 10 objection that does concern me a little bit is the bases for  
11 the opinion objection, and that, I don't want to address on the  
12 fly. But I think that is perhaps a more substantial objection.

13 MR. CARNEY: May I ask your Honor a logistical  
14 question? If the jury enters the room, the government will  
15 announce it's going to rest. I then would be bringing a motion  
16 before your Honor that I will rest on the paper. Would it be  
17 possible, before the jury comes out, for the government to at  
18 least confirm with you that it's going to rest? Then I will  
19 make the motion --

04:13 20 THE COURT: What I've done in the past --

21 MR. CARNEY: -- and then the jury --

22 THE COURT: In some circumstances like this, we've  
23 actually had the government rest outside the presence the jury  
24 as an effective rest, which tees up the motion. We then stage  
25 a rest for the jury. All right. It just repeats what has

1 already happened. Same thing.

2 MR. CARNEY: I understand.

3 MS. BASSIL: Like a civil and a religious wedding  
4 ceremony.

5 THE COURT: That's correct. Okay.

6 (Whereupon, at 1:22 p.m. the trial recessed.)

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## C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 09-10017-GAO-1, United States of America v. Tarek Mehanna.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

/s/ Cheryl Dahlstrom  
CHERYL DAHLSTROM, RMR, CRR  
Official Court Reporter

Date: December 6, 2011